2543

SUPREME COURT OF THE UNITED STATES.

No. 216.

JOSHUA L. CAREW, ELISHA C. LITCHFIELD, THE PRESIDENT, DIRECTORS, AND COMPANY OF THE FARMERS AND MECHANICS' BANK OF MICHIGAN, AND LEWIS CASS, APPELLANTS,

vs.

WILLIAM H. GREENE.

APPEAL FROM THE CIRCUIT COURT, UNITED STATES, FOR THE DISTRICT OF MICHIGAN.

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Circuit court of the United States, for the seventh circuit and district of Michigan, to wit:

I, John Winder, clerk of said court, do hereby certify the above and foregoing to be a true and correct exemplification of the pro-
[SEAL.] ceedings and decree of said court, sitting in chancery, in the case between William H. Greene, complainant, and Joshua L. Carew, Elisha C. Litchfield, the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, and Lewis Cass, defendants, as the same stands enrolled in said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Detroit, in said district, this sixteenth day of August, in the year of our Lord one thousand eight hundred and fifty-one, and of the independence of the United States of America the seventy-sixth.

JNO. WINDER, *Clerk.*

Appeal to the Supreme Court of the United States.

WILLIAM H. GREENE
vs.
Josh. L. Carew, Elisha C. Litchfield, the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, and Lewis Cass.

Know all men by these presents, that we, Elisha C. Litchfield and , of the city of Detroit, in the State of Michigan, are held and firmly bound unto the above named William H. Greene, in the sum of six thousand dollars, to be paid to the said William H., his executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated the fourteenth day of March, in the year one thousand eight hundred and fifty-one.

Whereas an appeal has been allowed by the circuit court of the United States, for the district of Michigan, sitting in chancery, in the above entitled cause, to the Supreme Court of the United States, to review and re-examine the final decree of foreclosure and sale, made and entered in the above entitled cause by the said circuit court, on the 16th day of December, A. D. 1850.

Now, therefore, the condition of this obligation is such, that if the said Elisha C. Litchfield and Joshua L. Carew shall prosecute said appeal to effect, and answer all damages and costs if they shall fail to

reverse said decree, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

E. C. LITCHFIELD, [SEAL.]
B. HUBBARD. [SEAL.]

Sealed and delivered in presence of—
ALEX. DAVIDSON.

DISTRICT OF MICHIGAN,
County of Wayne.

Elisha C. Litchfield, being by me sworn, doth depose and swear, that he is the owner, and is possessed, of property in his own right of the value of six thousand dollars and upwards subject to execution, and that he is one of the persons who signed the within bond.

E. C. LITCHFIELD.

Subscribed and sworn to before me, this 14th March, 1851.

D. C. HOLBROOK,
Notary public, W. C. M.

Hon. ROSS WILKINS, *district judge.*

In the case of Greene vs. Carew and others, a bond signed by Messrs. Litchfield and Bela Hubbard will be entirely satisfactory as to the sufficiency of the same.

Yours, respectfully,
BARSTOW & LOCKWOOD,
Solicitors for Greene.

I approve of the within bond.

ROSS WILKINS, *District judge.*

UNITED STATES OF AMERICA, *ss:*

To William H. Greene, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of January next, to hear an appeal allowed by the circuit court of the United States, for the district of Michigan, sitting in chancery, in a certain cause in said circuit court pending, wherein you are complainant, and Joshua L. Carew, Elisha C. Litchfield, the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, and Lewis Cass, are defendants, to show cause, if any there be, why the final decree of foreclosure and sale, appealed from as aforesaid, should not be corrected and reversed, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme

Court of the United States, at Detroit, this fourteenth day of March, in the year one thousand eight hundred and fifty-one.

ROSS WILKINS, *District judge.*

WILLIAM H. GREEN
vs.
JOSHUA L. CAREW, Elisha C. Litchfield, the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, and Lewis Cass.

In the circuit court of United States, for the district of Michigan, sitting in chancery.

To the judges of said circuit court of the United States, sitting in chancery, the petition of Elisha C. Litchfield, Joshua L. Carew, two of the defendants above named, respectfully show:

That the bill of complaint in the above entitled cause was filed in the office of the clerk of said circuit court, at the city of Detroit, in said district of Michigan, on the 2d day of February, A. D. 1849; that a subpœna was issued thereon, and was served on said defendants; that the appearance of your petitioners and said bank was duly entered in said cause; that subsequently, and on the 20th day of May, A. D. 1850, your petitioners filed their joint and several answer to the bill of complaint of said complainant.

That on the 16th day of December, A. D. 1850, a final decree of foreclosure and sale was made and entered in said cause; that your petitioners consider themselves aggrieved by said final decree, and they pray that your honors may allow them to appeal from said final decree entered in said circuit court of the United States, sitting in chancery, in the above entitled cause, on said 16th day of December, in said year, 1850, to the Supreme Court of the United States; and your petitioners will ever pray.

Dated Detroit, 12th March, 1851.

E. C. LITCHFIELD,
J. L. CAREW.

I allow an appeal in the above entitled cause to the Supreme Court of the United States, the petitioners giving bond in the sum of six thousand dollars.

ROSS WILKINS, *Judge.*

Circuit court of the United States, for the district of Michigan, in chancery.

To the judges of the circuit court of the United States, for the district of Michigan, sitting in chancery.

Your orator, William H. Green, of Buffalo, New York, and who is a citizen of the State of New York, brings this his bill of complaint

against Joshua L. Carew, of the city of Detroit, Michigan, and who is a citizen of the State of Michigan, defendant; and therefore your orator complains and says, that on or about the seventeenth day of August, in the year of our Lord one thousand eight hundred and forty-six, said Joshua L. Carew became and was justly indebted unto one Samuel T. Atwater, of Buffalo, in the State of New York, in the sum of three thousand dollars, and being so indebted the said Joseph L. Carew, in order to secure to the said Atwater the payment thereof with interest, did execute under his hand and seal, and deliver to said Atwater, a certain bond or writing obligatory, bearing date the day and year aforesaid, in the sum of six thousand dollars, with a condition thereunder written, that if the said Carew, his heirs, executors, and administrators, or any of them, should pay, or cause to be paid, to said Atwater, or his certain attorney, executors, administrators, or assigns, the sum of three thousand dollars, in three equal annual payments of one thousand dollars each, from the first day of September, one thousand eight hundred and forty-six, with interest on the whole sum remaining unpaid, at the rate of seven per cent. per annum, to be computed from the first day of September then next, and to be paid semi-annually, on the first days of March and September, in each year, without fraud or delay; then the said bond was to be void, otherwise of full force, as by the said bond now in the possession of your orator, and ready to be produced and proved as this honorable court shall direct, and to which, when produced and proved by your orator, for greater certainty pray leave to refer, will more fully and at large appear.

And your orator further shows unto your honor, that the said Joshua L. Carew, on the said seventeenth day of August, in the year of our Lord one thousand eight hundred and forty-six, in order to secure to said Atwater the payment of the said sum of money above mentioned, together with the interest thereon, in manner aforesaid, did execute under his hand and seal, and deliver to said Atwater, a certain indenture of mortgage, bearing date the same day and year last aforesaid, and thereby, for the consideration of one dollar, lawful money of the United States, to him in hand paid, the receipt whereof was by the said indenture of mortgage duly confessed and acknowledged, the said Carew, the party of the first part in and to said indenture of mortgage, did grant, bargain, sell, release, enfeoff, and confirm, unto the said Atwater, the party of the second part in said indenture, and to his heirs and assigns forever, all that certain piece or parcel of land described as follows, to wit, the equal undivided half of all those certain pieces or parcels of land, situate, lying, and being in the city of Detroit aforesaid, on what is called the "Cass Farm," being lots number five and eight, in block numbered six, with the undivided half of the brick brewery building, with the fixtures, apparatus, and furniture.

And your orator further shows unto your honor, that the said Carew did covenant in said mortgage for himself, his heirs, executors, and administrators, with the said Atwater, party of the second part, his heirs, executors, and administrators, and assigns, that he, the said Carew,

should keep the buildings and erections on the property described in said mortgage insured, at his own expense, in some insolvent insurance company, from loss or damage by fire, during the continuance of said mortgage, to an amount equal to what might be unpaid of the moneys secured by said mortgage; and that he, the said Carew, should assign to said Atwater all policies, or the renewals of such policies of insurance, made or to be made upon the said property, and that in the default of said Carew so to do, the said Atwater might so insure the said buildings and erections, and the premises paid for the same, be a charge upon the said premises and deemed to be secured by the said mortgage.

To have and to hold the above bargained premises to the said party of the second part, his heirs and assigns forever. Provided, always, and the said indenture of mortgage was upon the express condition, that if the said party of the first part, his heirs, executors, administrators, should and did well and truly pay, or cause to be paid, to said party of the second part, his heirs, executors, administrators, or assigns, the just and full sum of money mentioned in the condition of said bond or writing obligatory, and the interest thereon, at the times and in the manner mentioned in the said condition of said bond hereinbefore mentioned and set forth, then the said bond and the said indenture of mortgage, and the estate and interest thereby granted, and every thing therein contained, should cease and be null and void; but in case of non-payment of the said sum of money mentioned in the condition of said bond, or of the interest thereof, or any part thereof, at the above times limited in said bond and indenture of mortgage; for the payment thereof, then and in such cases it should and might be lawful for said party of the second part, to said indenture of mortgage, and the said party of the first part thereto did thereby empower and authorize the said party of the second part, his heirs, executors, administrators, or assigns, to grant, bargain, sell, release, and convey the said premises, or any part thereof, with the appurtenances, at public auction or vendue, and on such sale to make and execute to the purchaser or purchasers, his, her, or their heirs and assigns forever, good, ample, and sufficient deed or deeds of conveyance in the law, pursuant to the statute in that case made and provided, rendering the surplus money, (if any there should be,) to the said party of the first part, his heirs, executors, or administrators, after deducting the principal and interest money due as aforesaid, and the costs and charges of such vendue and sale aforesaid; and it was thereby expressly covenanted by the said party of the first part, that the said mortgage should not be subject to any provision of law then being, or to be thereafter in force, requiring the appraisal or set off of said mortgaged premises, as in and by said mortgage made and executed by the said Joshua L. Carew, under his hand and seal, and now in the possession of your orator, ready to be produced and proved as this honorable court shall direct, reference being thereto had, will more fully and at large appear.

And your orator further shows unto your honor, that afterwards, to

wit, on the seventeenth day of September, in the year of our Lord one thousand eight hundred and forty-six, the execution of the said indenture of mortgage was duly acknowledged by the said Carew before William T. Young, then a justice of the peace in and for the county of Wayne, and State of Michigan, duly authorized and empowered to take acknowledgments of deeds, as will on reference to the certificate of acknowledgment endorsed thereon, signed by said William T. Young, more fully and at large appear, and for which, for greater certainty, your orator pray leave to refer.

And your orator further shows unto your honor, that afterwards, to wit, on the seventeenth day of September, in the year of our Lord one thousand eight hundred and forty-six, the said indenture of mortgage, together with the certificate of acknowledgment thereof, was in due form of law recorded in the office of the register of deeds, in the county of Wayne, in liber 7, folios 346, 347, 348, 349, as by the record of said indenture of mortgage now remaining in said office of the county of Wayne, and as by the certificate of Silas A. Bagg, register of said county at the time last mentioned, endorsed on the said indenture of mortgage, and signed by the said Silas A. Bagg, register, sufficiently appears, and to which said record and certificate thereof your orator for greater certainty prays leave to refer. And your orator further shows unto your honor, that the said bond and the said indenture of mortgage in this your orator's bill herein before mentioned and set forth, were given by the said Carew to secure payment to said Atwater of the said sum of three thousand dollars, and interest, at the times and in the manner aforesaid.

And your orator further shows unto your honor, that afterwards, to wit, on the first day of March, in the year eighteen hundred and forty-eight, the said Atwater, by an instrument under his hand and seal, assigned and transferred to your orator the said bond and mortgage, and all his right, title, and interest therein, for a valuable consideration to him in hand paid by your orator, the receipt whereof was by the said instrument of assignment acknowledged, as by the said instrument of assignment, now in the possession of your orator, reference being thereto had, will appear.

And your orator further shows unto your honor, that afterwards, to wit, on the fifth day of December, A. D. eighteen hundred and forty-eight, the execution of the said assignment was duly acknowledged before Frederick P. Stevens, then a commissioner of deeds for the State of Michigan, residing in the county of Erie, and State of New York, by the said Atwater, as by the certificate of the acknowledgment thereof, signed by said commissioner and annexed to said instrument of assignment, will appear.

And your orator further shows unto your honor, that he is now the owner and holder of said bond and mortgage, and that no part of the money mentioned in said mortgage has ever been paid either to said Atwater previous to said assignment, or to your orator since said assignment, nor to any person or persons authorized by them, or either

of them, to receive the same, and that the amount now due on said bond and mortgage is due and owing to your orator. And your orator futher shows unto your honor, that the matter in dispute in this cause is of the amount of more than five hundred dollars exclusive of costs. And your orator futher shows unto your honor, that for the payment of so much money as is now due and owing, from the said defendant to your orator, upon the said bond and indenture of mortgage, your orator, or some person in his stead and behalf, has frequently and in a friendly manner applied to the said defendant and the other parties defendants hereto hereinafter named, or to some of them, which said applications have been wholly unsuccessful, and your orator has been greatly delayed and disappointed in the receipt of the said sum of money; by means of which said premises the said indenture of mortgage and bond have become forfeited at law, and the estate created and granted by the said indenture of mortgage has become absolute in your orator, subject only to the equity of redemption in this honorable court.

And your orator further shows unto your honor, and expressly charges, that the said mortgaged premises are a slender and scanty security for the payment of the principal and interest moneys due to your orator as aforesaid, and that no proceedings at law have been had for the recovery or collection of debt or moneys secured to be paid by the said bond and indenture of mortgage, or for the recovery or collection of any part thereof; and that said debt or moneys and no part thereof have been collected or paid.

And your orator further shows unto your honor, that he has caused examinations to be made of the record of deeds and mortgages in the office of the register of the county of Wayne, where said mortgaged premises are situated, and from which said several examinations it appears, and your orator expressly charges the fact, that Elisha C. Litchfield, who is a citizen of the State of Michigan, and the President, Directors, and Company of the Farmers & Mechanics' Bank of the State of Michigan, an institution located and doing business in the State of Michigan, have, or claim to have, rights and interests in the premises described in said indenture of mortgage, or in some part or parts thereof, as subsequent incumbrancers or purchasers, or otherwise.

And your orator well hoped that the said defendants would have complied with the reasonable request of your orator herein before mentioned, and would have paid to your orator such principal and interest moneys so as aforesaid due and owing to your orator upon the said bond and indenture of mortgage, in manner aforesaid, or would have released their equity of redemption which they or any of them had in the said premises or any part thereof to your orator, and would all have discharged the same from liens, incumbrances, titles, or conveyances, which they or any of them had or held, claimed or pretended to have, subsequent to the date of said indenture of mortgage, so that your orator's estate therein might have become perfect and complete, as in equity and good conscience they ought to have done. But now, so it is, may it please your honor, that the said defendants, combining and

confederating with divers persons at present unknown to your orator, (but whose names when discovered, your orator prays may be inserted herein with apt and proper words to charge them as parties hereto,) how to wrong and injure your orator and to delay him in the collection, and defraud him in the principal and interest moneys so as aforesaid due from said Carew to your orator upon the said bond and indenture of mortgage as aforesaid, have hitherto, under various false and frivolous pretences and excuses, wholly neglected and refused to pay the said moneys so due as aforesaid to your orator; all which pretences and excuses, neglects and refusals, are contrary to equity and good conscience. In tender consideration whereof, and for so much as your orator has not a complete and safe remedy in the premises at and by the strict rules of the common law, and is only fully reliable in a court of equity, where matters of this nature are properly cognizable and relievable; nor can your orator foreclose the equity of redemption of the said mortgaged premises, nor safely sell the same for the payment and satisfaction of the principal and interest moneys so as aforesaid due from said Carew to your orator on the said bond and indenture of mortgage, in the manner aforesaid, without the aid and assistance of this honorable court.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may then, answer under oath being hereby expressly waived, according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereinunder written, they are required to answer, that is to say:

1st. Whether said defendant did, or did not, become and be indebted to said Atwater in the sum and about the time in this bill stated?

2d. Whether said defendant Carew did, or did not, execute and deliver to said Atwater the said note, at the time and for the purpose, in the manner and for the sum, herein before stated?

3d. Whether said defendant did, or did not, execute and deliver to said Atwater the said mortgage for the purpose, at the time, and in the manner herein before stated?

4th. Whether said defendant did, or did not, duly acknowledge the execution of said mortgage at the time, and in the manner, herein before stated?

5th. Whether the said mortgage and certificate of acknowledgment thereof were or were not duly recorded at the time and in the manner herein before stated?

6th. Whether said bond and mortgage were or were not duly assigned by said Atwater to said complainant at the time and in the manner herein before stated?

7th. Whether said instrument of assignment was, or was not, duly acknowledged at the time and in the manner herein before stated?

8th. Whether the complainant is not now the owner and holder of said bond and mortgage?

9th. Whether any part of the money which said mortgage was given to secure has ever been paid by said defendant, and whether the amount of money now due on the same is not due and owing to the complainant?

10th. Whether the said defendant, Elisha C. Litchfield, and the President, Directors, and Company of the Farmers & Mechanics' Bank of Michigan, do not claim some interest in said premises by subsequent encumbrances or otherwise, and what interest?

And that they may come to a fair and just account, touching the amount due from said owner to your orator upon the said bond and indenture of mortgage herein before mentioned and set forth,) and that they or some of them may be decreed to pay forthwith to your orator the amount which shall be found due to him thereon, and the interest thereon, together with your orator's reasonable costs and charges in this behalf sustained. And in default thereof, that the defendants herein named, and each of them, and all persons claiming or to claim from or under them, or either of them, may be foreclosed and barred of and from all equity of redemption and claim of, in, and to said mortgaged premises, with the appurtenances; and that all and singular the said mortgaged premises, with the appurtenances, may be sold by the order and decree, and under the direction, of this honorable court, or one of the masters thereof; and the moneys arising from the sale thereof, so far forth as shall be necessary, or so far as the same shall extend, be applied towards satisfying your orator the full amount of the moneys so as aforesaid secured in and by the said bond and indenture of mortgage, both principal and interest, if the whole shall be then due and unpaid; or if the whole amount shall not be then due, that such part of the said mortgaged premises as may be necessary to discharge the principal and interest moneys then found to be due to him thereon and unpaid, together with your orator's reasonable costs and charges, may be sold as aforesaid, and the proceeds to be applied thereto as aforesaid; or in case it shall appear to this honorable court that the said mortgaged premises are so situated that the sale of the whole will be most beneficial to the parties concerned, that then the whole of the said mortgaged premises, with the appurtenances, may be sold as aforesaid, and the proceeds of such sale be applied as well to the discharge of the principal and interest moneys then due, and your orator's costs and charges, as towards the whole or residue of the amount secured by the said bond and indenture of mortgage, and not due and payable at the time of such sale; or that this honorable court may direct the balance of the proceeds of such sale, after paying the sum due upon the said bond and indenture of mortgage, with your orator's costs and charges, to be put out at interest under the direction of this honorable court, for the benefit of your orator, to be paid to him as the remainder of said principal and interest moneys shall become due and payable, and the surplus, if any, for the benefit of the said Joshua L. Carew, and that the

said Joshua L. Carew, Elisha C. Litchfield, and the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, and all persons claiming and to claim under them, or either of them, or who have come into the possession of the said mortgaged premises, or any part or portion thereof, during the pendency of this suit, deliver and yield up possession thereof to your orator, or to whomsoever shall become the purchaser or purchasers thereof at the sale, on his, her, or their producing to him or them, or to the person or persons in possession of the said mortgaged premises, or any part thereof, the deed or deeds executed by the master pursuant to such sale as aforesaid, and a certified copy of the order confirming the report of such sale after such order has become absolute; or that your orator may have such other relief or such further relief in the premises as shall be agreeable to equity and good conscience.

May it please your honor, the premises being considered, to grant to your orator the most gracious writ of subpœna of the people of the State of Michigan, to be issued out of and under the seal of this honorable court, to be directed to the said Joshua L. Carew, Elisha C. Litchfield, and the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, therein and thereby commanding them and each of them, on a certain day and under a certain penalty to be therein inserted, personally to be and appear before your honor, in this honorable court, then and there to answer all and singular the said premises, and to stand to and abide and perform such order and decree therein as this honorable court shall make therein, and as shall be agreeable to equity and good conscience. And your orator will ever pray, &c.

BARSTOW & LOCKWOOD,
Solicitors and of counsel for complainants.

The defendant is required to answer the interrogatories numbered respectively, 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, and 10th

BARSTOW & LOCKWOOD,
Solicitors and of counsel.

Bill filed February 2d, 1849. Subpœna returnable 1st Monday of March next.

JNO. WINDER, *Clerk*,
By GEO. G. BULL, *Deputy*.

" We acknowledge ourselves security for costs in this suit.
BARSTOW & LOCKWOOD.

Copy of subpœna.

Circuit court of the United States of America, for the seventh circuit, and district of Michigan, sitting in chancery.

The President of the United States of America, to Joshua L. Carew,

Elisha C. Litchfield, and the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, who are citizens of the State of Michigan.

You are hereby commanded to be and appear in the circuit court of the United States of America, for the seventh circuit and district of Michigan, sitting in chancery, before the judges thereof, at the district court room, in the city of Detroit, on Monday, the fifth day of March next ensuing, then and there to answer unto a bill of complaint exhibited against you as defendants by William H. Greene, who is a citizen of the State of New York, complainant, and this you shall in no wise omit under the penalty of one thousand dollars.

Witness the hon. Roger B. Taney, chief justice of the Supreme Court of the United States, this second day of February, in the year of our Lord one thousand eight hundred and forty-nine, and of the independence of the United States the seventy-third.

JNO. WINDER, *Clerk.*

BARSTOW & LOCKWOOD,
Complainants' solicitors.

Memorandum.—The above named defendants are required to enter their appearance in this suit with the clerk of this court, at his office in the city of Detroit, on or before the day to which this writ of subpœna is returnable, otherwise the bill of complaint in this cause will be taken pro confesso against said defendants.

JNO. WINDER, *Clerk.*

We hereby admit due and personal service of the within subpœna this sixth day of February, 1849.

(Signed) J. L. CAREW,
E. C. LITCHFIELD.

President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, by E. C. LITCHFIELD.

Clerk please enter order pro confesso.

(Signed) BARSTOW & LOCKWOOD.

April 2d, 1849.

Copy.—Order pro confesso and reference to master to compute amount due. Entered April 2d, 1849.

WILLIAM H. GREENE, complainant,
vs.
JOSHUA L. CAREW, Elisha C. Litchfield, the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, defendants.

In chancery. Rule day.

The subpœna and memorandum in this cause having been returned

with due and personal service thereof upon each of said defendants, admitted by endorsement upon said subpœna, signed by them, and they having failed to plead answer or demur to the bill of complaint filed in this cause within the time prescribed by the rules and practice of this court: On motion of Barstow and Lockwood, the solicitors for the complainant, it is ordered, that the default of the said defendants be, and the same is hereby, entered; and on like motion it is further ordered, that the said bill of complaint, and the matters therein alleged, be taken as confessed against said defendants, and that it be referred to one of the masters of this court to compute and ascertain the amount due and to become due to said complainant, upon the securities mentioned in said bill of complaint, and report thereon to this court with all convenient speed.

Entered by order of BARSTOW & LOCKWOOD.
Complainant's solicitors,
By JNO. WINDER, *Clerk,*
GEO. G. BULL, *Deputy.*

Copy.—Master's report of amount due on bond and mortgage.

Circuit court of the United States, for the district of Michigan.

In the case between WM. H. GREENE, complainant, and JOSHUA L. CAREW, Elisha C. Litchfield, and the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, defendants.

In chancery. May 26, 1849.

To the judges of the circuit court of the United States, for the district of Michigan.

In pursuance of an order of this court, made and entered in the above entitled cause, and bearing date the second day of April, A. D. 1849, whereby it was referred to one of the masters of this court to compute and ascertain the amount both for principal and interest, moneys now due and to become due the complainant, upon the bond and mortgage mentioned and set forth in said complainant's bill of complaint filed in this cause, and to make report thereof to this court, with all convenient speed, I, the undersigned, one of the masters of this court, having been charged with the execution of said order, do most respectfully certify and report, that I have computed and ascertained the amount actually due on said bond and mortgage, for principal and interest, and report the amount so due this day to be the sum of two thousand five hundred and seventy-five dollars and sixteen cents ($2,575 16.)

And I do further certify and report, that the further sum of one thousand dollars, and the interest thereon from the first day of March, A. D. 1849, will become due on said bond and mortgage on the first day

of September, A. D. 1849, as will more particularly appear by schedule hereto annexed, marked "B."

And I do further certify and report, that the schedule hereto annexed, marked "A," making a part of this my report, contains a statement and account of the principal and interest moneys now due on said bond and mortgage, the period of the computation of the interest and its rate.

The bond and mortgage referred to in above report, and in said bill of complaint, are hereto annexed; the bond marked "exhibit C," and the mortgage marked "exhibit D."

All which is respectfully submitted.

(Signed) GEO. G. BULL,
Master in chancery.

Dated May 26, 1849.

Schedule "A" referred to in above report.

1 bond dated August 17, 1846, in the penal sum of $6,000, conditioned to pay the sum of $3,000 in 3 equal annual instalments of $1,000 each, with interest on the whole sum remaining unpaid at the rate of 7 per cent. per annum, to be computed from the first day of September, A. D. 1846, and to be paid semi-annually on the 1st days of March and September in each year, which bond is accompanied with a mortgage of the same date.

Interest on the sum of $3,000 from Sept. 1, 1846, to May 26, 1849, being 2 years, 8 months, and 26 days, at 7 per cent. per annum - - - - -	$575 16
Two instalments of $1,000 each, due Sept. 1, 1848 -	2,000 00
Am't due May 26, 1849 - - -	$2,575 16

Schedule "B" referred to in above report.

Third and last instalment of $1,000 on said bond will fall due Sept. 1st, 1849, with interest thereon from March 1st, 1849.

All which is respectfully submitted.

(Signed) GEO. G. BULL,
Master in chancery.

Dated May 26, 1849.

Copy.—Affidavit of Wm. Hale, solicitor for E. C. Litchfield et al.

Circuit court of the United States, for the district of Michigan.

WILLIAM H. GREENE, complainant,
vs.
JOSHUA L. CAREW, Elisha C. Litchfield, and the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, defendants.

In chancery.

DISTRICT OF MICHIGAN, *ss.*

Elisha C. Litchfield, one of the above named defendants, being duly sworn, doth depose and say, that at the time of the filing of the bill of complaint in this cause, as he, this deponent, has been informed and believes, the legal title of the lots five and eight, described in the said bill of complaint, was vested in Lewis Cass, of Detroit, and that he had been for many years previous thereto, had continued to be, and is now, the legal owner of the said lots. That on or about the seventh day of July, eighteen hundred and thirty-five, as this deponent has been informed and believes, the said Lewis Cass being then the owner of the said lots, executed and delivered to one Thomas J. Owen, two several bonds or contracts, under seal, whereby he agreed to sell and convey to the said Owen the said lot number five, for the sum of twelve hundred and five dollars, and the said lot number eight for the sum of eleven hundred and twenty-five dollars; one fourth of each of said sums of money being payable on the first day of July, eighteen hundred and thirty-seven, and the balance thereof on the first day of July, eighteen hundred and forty-seven, with semi-annual interest; upon full payment whereof at the times specified the said Cass agreed to convey to said Owen the said lots five and eight, by good and sufficient deeds of warranty; but it was expressly agreed, in and by said bonds or contracts, that in case of non-payment of the said sums of money, or any part thereof, at the time the same became due and payable, the said bonds or contracts were to become null and void, and the said Cass was to be at liberty to repossess himself of the said lots, and the said Owen was to redeliver to him the peaceable possession *of* thereof; all of which will more fully and at large appear by reference to the said bonds or contracts, or the duplicates thereof, now in the possession of the said Lewis Cass.

This deponent further says, that on the first day of July, one thousand eight hundred and forty-seven, as he, this deponent, has been informed and believes, the said bonds or contracts were forfeited by the non-payment of the sums of money due thereon, the same being about three-fourths of the respective sums which were agreed to be paid for said lots; and that no part of the principal of the sums then due has been paid to the said Cass.

This deponent further says, that on the second day of June, one thousand eight hundred and thirty-eight, the said Thomas J. Owen conveyed by deed of quit claim all the right, title, and interest of him, the said Owen, in and to the said lots, to Curtis Emerson, Oren Moore, and Royal H. Waller, and that by subsequent transfers by and between the said parties, the said interest in said lots, as this deponent has been informed and believes, became vested in equal undivided portions in the said Oren Moore and the said Curtis Emerson.

This deponent further says, that on or about the twelfth day of November, one thousand eight hundred and forty-two, as this deponent

has been informed and believes, the said Oren Moore conveyed to one Roger Fitzpatrick the one undivided half of said lots, by deed of mortgage, to secure to said Fitzpatrick the sum of one thousand and six hundred and fifty-three dollars and ninety-five cents, the whole amount of the principal of which sums, and a part of the interest, the said Fitzpatrick claims to be yet due and unpaid.

This deponent further says, that by the various subsequent transfers by deeds of quit claim, as he, this deponent, has been informed and believes, the interest of the said Emerson & Moore became vested in the said Joshua L. Carew, one of the above named defendants, one undivided half of the said lots having been conveyed to him by deed of quit claim, on the twenty-seventh day of April, one thousand eight hundred and forty-six, and the other undivided half, by a like deed, on the seventeenth day of August of the same year.

This deponent further says, that on the ninth day of November, one thousand eight hundred and forty-six, the said Joshua L. Carew, as this deponent has been informed and believes, conveyed the undivided half of the lots five and eight to one Joseph T. Bailey, by deed of mortgage, to secure to the said Bailey the payment of the sum of six thousand dollars, the greater portion whereof, but the precise sum this deponent is unable to state, remains due and unpaid, as he has been informed and believes.

This deponent further says, that the said Joshua L. Carew, afterwards, on the fifteenth day of February, one thousand eight hundred and forty-eight, executed and delivered to this deponent, a mortgage on the said lots, to secure to this deponent the payment of the sum of twenty-five thousand dollars and interest; the whole of which is now due and unpaid.

This deponent further says, that the said bonds or contracts, executed by the said Lewis Cass to the said Thomas J. Owen, have not, as this deponent has been informed and believes, been assigned by the said Owen to any of the subsequent vendees, of the interest of the said Owen, except in the manner and form herein before stated; and that the said bonds or contracts have not been recorded in the office of the register of deeds for the county of Wayne, nor have the same been acknowledged by the said Cass.

This deponent further says, the said Roger Fitzpatrick, the owner of the mortgage herein before set forth, on the second day of February last, and prior to the commencement of this suit, filed his bill in the circuit court, for the county of Wayne, in the State of Michigan, sitting as a court of equity, for the foreclosure and sale of the said mort, gaged premises, in which bill the said Roger Fitzpatrick is complainant, and the said Lewis Cass, Joshua L. Carew, Samuel T. Atwater, William H. Greene, this deponent, and the heirs of Oren Moore, deceased, to wit, Orlando D. Moore, Alphonso D. Moore, Daniel E. Hubbard, and Mary M. Hubbard, are defendants, as will appear by reference to the bill of complaint, filed in said court.

This deponent further says, that on the day of the filing of the said

bill, as this deponent has been informed and believes, a subpœna ad respondendum was duly issued out of, and under the seal of the said court in said suit. That the above named complainant, William H. Greene, has approved, and by Barstow & Lockwood, his solicitors, filed an answer to said bill, wherein the said William H. Greene prays the said circuit court so to frame the decree that the rights of the respective parties holding mortgages on the undivided interests may be defined, and the rights of the said William H. Greene, under his said mortgage, fully protected. And further this deponent saith not.

(Signed) E. C. LITCHFIELD.

Sworn and subscribed before me, this 29th day of June, A. D. 1849.

C. C. JACKSON,
Master in chancery.

CIRCUIT COURT OF THE UNITED STATES,
District of Michigan.

Copy [of] affidavit of T. W. Lockwood, solicitor for complainants; filed June 29, 1849.

Circuit court of the United States, for the district of Michigan.

WILLIAM H. GREENE
vs.
JOSHUA S. CAREW, Elisha C. Litchfield, and the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan. } In chancery.

DISTRICT OF MICHIGAN, *ss.*

Thomas W. Lockwood, one of the solicitors for the complainant in this cause, being duly sworn says, that the bill, in this cause, was filed on the second day of February, 1849, and a subpœna issued on the same day, returnable on the 1st Monday of March last, and was served on all the defendants on the sixth day of February last, as appears by their admission thereof, endorsed on the said subpœna on file in this cause, signed by said Carew and Litchfield, in person, and by said Litchfield for the said President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, as their cashier, in the presence of this deponent, on that day, and that no appearance for said defendants has ever been entered, or answer filed in this cause. That this deponent delayed entering the order pro confesso and for reference, until the first Monday in April, at the request of said Litchfield, who said he might wish to answer said bill by that time; and after said order was so entered, this deponent agreed verbally with William Hale, esq., a solicitor of this court, who spoke to this deponent on behalf of said

Litchfield. That this deponent would receive an answer from the defendants at any time before the first Monday of May last, on the condition that defendants would stipulate to take any necessary testimony within twenty days from that time, and go to a hearing at the present term of this court, and that on no other condition would the order pro confesso be waived; and that all the proceedings to take said bill, as confessed, have been regular according to the practice of this court.

(Signed) T. W. LOCKWOOD.

Subscribed and sworn this 27th day of June, 1849, before me.

(Signed) HORATIO G. SPAFFORD,
Notory public, Wayne co., Michigan.

Copy [of] order granting complainant leave to amend bill.

GREENE
vs.
CAREW and al.

Leave granted complainant to amend his bill of complaint.

(Signed) ROSS WILKINS, *Judge.*

Circuit court of the United States, for the district of Michigan, in chancery.

To the judges of the circuit court of the United States, for the district of Michigan, sitting in chancery.

Your orator, William H. Greene, of Buffalo, New York, and who is a citizen of the State of New York, brings this his bill of complaint against Joshua L. Carew, Elisha C. Litchfield, and Lewis Cass, of the city of Detroit, Michigan, and who are citizens of the State of Michigan, and the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, a corporation located and doing business in the city of Detroit, and State of Michigan, defendants; and therefore your orator complains and says, that on or about the seventeenth day of August, in the year of our Lord one thousand eight hundred and forty-six, said Joshua L. Carew became, and was justly, indebted unto one Samuel T. Atwater, of Buffalo, in the State of New York, in the sum of three thousand dollars; and being so indebted, the said Joshua L. Carew, in order to secure to the said Atwater the payment thereof, with interest, did execute under his hand and seal, and deliver to said Atwater, a certain bond or writing obligatory, bearing date the day and year aforesaid, in the sum of six thousand dollars, with a condition thereunder written, that if the said Carew, his heirs, executors, and administrators, or any of them, should pay, or cause to be paid, to said Atwater, or his certain attorney, executors, administrators, or assigns, the sum of three thousand dollars, in three equal annual payments of one thousand dollars each, from the first day of September, one thousand eight hundred and forty-six, with interest on the whole

sum remaining unpaid, at the rate of seven per cent. per annum, to be computed from the first day of September then next, and to be paid semi-annually, on the first days of March and September in each year, without fraud or delay, then the said bond was to be void, otherwise of full force, as by the said bond, now in the possession of your orator, and ready to be produced and proved as this honorable court shall direct, and to which, when produced and proved by your orator, for greater certainty pray leave to refer, will more fully and at large appear.

And your orator further shows unto your honor, that the said Joshua L. Carew, on the said seventeenth day of August, in the year of our Lord one thousand eight hundred and forty-six, in order to secure to said Atwater the payment of the said sum of money above mentioned, together with the interest thereon, in manner aforesaid, did execute under his hand and seal, and deliver to said Atwater, a certain indenture of mortgage, bearing date the same day and year last aforesaid, and thereby for the consideration of one dollar, lawful money of the United States, to him in hand paid, the receipt whereof was by the said indenture of mortgage duly confessed and acknowledged, the said Carew, the party of the first part in and to said indenture of mortgage, did grant, bargain, sell, release, enfeoff, and confirm unto the said Atwater, the party of the second part in said indenture, and to his heirs and assigns forever, all that certain piece or parcel of land described as follows, to wit, the equal undivided half of all those certain pieces or parcels of land situate, lying, and being in the city of Detroit aforesaid, on what is called the Cass farm, being lots numbered five and eight, in block numbered six, with the undivided half of the brick brewery building, with the fixtures, apparatus, and furniture.

And your orator further shows unto your honor, that the said Carew did covenant in said mortgage, for himself, his heirs, executors, and administrators, with the said Atwater, party of the second part, his heirs, executors, administrators, and assigns, that he, the said Carew, should keep the buildings and erections on the property described in said mortgage insured at his own expense, in a solvent insurance company, from loss or damage by fire during the continuance of said mortgage, to an amount equal to what might be unpaid of the moneys secured by said mortgage; and that he, the said Carew, should assign to said Atwater all policies, or renewals of such policies, of insurance made or to be made upon the said property, and that in the default of said Carew so to do, the said Atwater might so insure the said buildings and erections, and the premium paid for the same be a charge upon the said premises, and deemed to be secured by said mortgage.

To have and to hold the above bargained premises to the said party of the second part, his heirs and assigns forever. Provided always, and the said indenture of mortgage was upon the express condition, that if the said party of the first part, his heirs, executors, administrators, should and did well and truly pay, or cause to be paid, to said party of the second part, his heirs, executors, administrators or assigns, the just and full sum of money mentioned in the condition of said bond

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or writing obligatory, and the interest thereon, at the time and in the manner mentioned in the condition of said bond, herein before mentioned and set forth, then the said bond and the said indenture of mortgage, and the estate and interest thereby granted, and every thing therein contained, should cease and be null and void; but in case of non-payment of the said sum of money mentioned in the condition of said bond, or of the interest thereof, or any part thereof, at the above times limited in said bond and indenture of mortgage, for the payment thereof, then and in such cases it should and might be lawful for said party of the second part to said indenture of mortgage, and the said party of the first part thereto did thereby empower and authorize the said party of the second part, his heirs, executors, administrators, or assigns, to grant, bargain, sell, release, and convey the said premises, or any part thereof, with the appurtenances, at public auction or vendue, and on such sale to make and execute to the purchaser or purchasers, his, her, or their heirs and assigns forever, good, ample, and sufficient deed or deeds of conveyance in the law, pursuant to the statute in that case made and provided, rendering the surplus money (if any there should be) to the said party of the first part, his heirs, executors, or administrators, after deducting the principal and interest money due as aforesaid, and the costs and charges of such vendue and sale aforesaid; and it was thereby expressly covenanted by the said party of the first part, that the said mortgage should not be subject to any provision of law, then being, or to be thereafter, in force, requiring the apprisal or set-off of said mortgaged premises, as in and by the said mortgage, made and executed by the said Joshua L. Carew, under his hand and seal, and now in the possession of your orator, ready to be produced and proved as this honorable court shall direct, reference being thereto had, will more fully and at large appear.

And your orator further shows unto your honor, that afterwards, to wit, on the seventeenth day of September, in the year of our Lord one thousand eight hundred and forty-six, the execution of the said indenture of mortgage was duly acknowledged by the said Carew before William T. Young, then a justice of the peace, in and for the county of Wayne, and State of Michigan, duly authorized and empowered to take acknowledgments of deeds, as will on reference to the certificate of acknowledgment endorsed thereon, signed by said William T. Young, more fully and at large appear, and to which, for greater certainty, your orator prays leave to refer.

And your orator further shows unto your honor, that afterwards, to wit, on the seventeenth day of September, in the year of our Lord one thousand eight hundred and forty-six, the said indenture of mortgage, together with the certificate of acknowledgment thereof, was in due form of law recorded in the office of the register of deeds in the county of Wayne, in liber 7, folio 346, 347, 348, 349, as by the record of said indenture of mortgage, now remaining in said office of the county of Wayne, and as by the certificate of Silas A. Bagg, register of said county at the time last mentioned, endorsed on the said indenture of

mortgage, and signed by the said Silas A. Bagg, register, sufficiently appears, and to which said record and certificate thereof your orator, for greater certainty, prays leave to refer.

And your orator further shows unto your honor, that the said bond, and the said indenture of mortgage, in this your orator's bill herein before mentioned and set forth, were given by the said Carew to secure the payment to said Atwater of the sum of three thousand dollars and interest, at the times and in the manner aforesaid.

And your orator further shows unto your honor, that afterwards, to wit, on the first day of March, in the year eighteen hundred and forty-eight, the said Atwater, by an instrument under his hand and seal, assigned and transferred to your orator the said bond and mortgage, and all his right, title, and interest therein, for a valuable consideration to him in hand paid by your orator, the receipt whereof was by the said instrument of assignment acknowledged. as by the said instrument of assignment now in the possession of your orator, reference being had thereto, will appear.

Amended May 1st, 1850, *by order*. And your orator further shows, that the said Samuel T. Atwater was, at the time of the making the said assignment, and at the time of filing the original bill in this cause, and still is, a citizen of the State of New York.

And your orator further shows unto your honor, that afterwards, to wit, on the fifth day of December, A. D. eighteen hundred and forty-eight, the execution of said assignment was duly acknowledged before Frederick P. Stevens, a commissioner of deeds for the State of Michigan, residing in the county of Erie, in the State of New York, by the said Atwater, as by the certificate of the acknowledgment thereof, signed by said commissioner, and annexed to said instrument, will appear.

And your orator further shows unto your honor, that he is now the owner and holder of said bond and mortgage, and that no part of the money mentioned in said mortgage has ever been paid, either to said Atwater previous to said assignment, or to your orator since said assignment, nor to any person or persons authorized by them, or either of them, to receive the same, and that the amount now due on said bond and mortgage is due and owing to your orator.

And your orator further shows unto your honor, that the matter in dispute in this cause is of the amount of more than five hundred dollars, exclusive of costs.

And your orator further shows unto your honor, that the legal title to the premises, one undivided half of which is covered by the said mortgage, so assigned to your orator, is vested in Lewis Cass, of the city of Detroit, who heretofore, by one or more contracts or bonds, dated on or about the seventh day of July, in the year eighteen hundred and thirty-five, contracted and agreed to sell and convey the said premises to one Thos. J. Owen, said lot number five, mentioned in said mortgage, for the sum of twelve hundred and five dollars, and said lot number eight for the sum of eleven hundred and twenty-five dollars;

the whole of which was made payable, according to the terms of said bonds, on or before the first day of July, one thousand eight hundred and thirty-seven; each of said bonds bearing interest at seven per cent., payable semi-annually; and that subsequently, the particular times your orator cannot state, the said Thomas J. Owen conveyed and assigned his interest in said premises to Oren Moore, Curtis Emerson, and Royal H. Waller, and that subsequently, and before any now existing encumbrances, except the rights of said Cass, were created upon said property, the interest of said Moore, Emerson, and Waller became vested in said Oren Moore and Curtis Emerson, solely, subject only to the rights of said Cass, who became and were the owners and holders of the equitable interest therein in equal portions and with equal undivided interests. That, on or about the seventh day of November, A. D. 1842, said Emerson sold and conveyed his interest in said premises, being one undivided half part thereof, to one Elisha S. Avery, and that said Avery afterwards, and before the execution of your orator's said mortgage, sold and conveyed his said undivided half part thereof to the said Joshua L. Carew, and which is the interest covered by the said mortgage so assigned to your orator, and that no encumbrance prior to your orator's said mortgage, except the right of said Cass, exists upon the said undivided half so conveyed by said Avery to said Carew.

And your orator further shows, that he is informed and believes, that all the interest now due upon the said bonds for the purchase of said lots five and eight, has been paid to and received by the said Lewis Cass; and that by some agreement or arrangement between the said Cass and the holders of said bonds, the same have been saved from forfeiture according to the original terms thereof, and some further time given for the payment of the principal sum, the precise nature of which your orator is ignorant.

And your orator further shows, that the several holders of said contracts or bonds from said Lewis Cass, have always, from the time of making the same, been in the actual and notorious possession of said premises, and have erected thereon large and extensive brick buildings for a brewery, and placed a steam engine and other machinery and fixtures thereon, and have carried on the business of brewing therein to a large extent, and expended thereon more than the sum of twenty thousand dollars.

And your orator claims that, upon paying to the said Lewis Cass one-half of the amount due and unpaid upon his said bonds or contracts, he is equally entitled to a conveyance thereof in fee from the said Cass; or that upon a sale of the undivided half of said premises by order of this court, after the said Cass shall be paid the amount of his proper claim upon the interest in said premises, covered by your orator's mortgage, that said Lewis Cass shall join in the conveyance to be executed to the purchaser at such sale, or that your orator's rights may be protected in such other way as may be just.

And your orator further shows unto your honor, that for the payment of so much money as is now due and owing from the said Carew to

your orator upon the said bond and indenture of mortgage, your orator, or some person in his stead and behalf, has frequently and in a friendly manner applied to the said Joshua L. Carew, and the other parties defendants hereto hereinafter named, or to some of them, which said applications have been wholly unsuccessful, and your orator has been greatly delayed and disappointed in the receipt of the said sum of money; by means of which said premises the said indenture of mortgage and bond have become forfeited at law, and the estate created and granted by the said indenture of mortgage has become absolute in your orator, subject only to the equity of redemption in this honorable court.

And your orator further shows unto your honor, and expressly charges, that the said mortgaged premises are a slender and scanty security for the payment of the principal and interest moneys so due to your orator as aforesaid, and that no proceedings at law have been had for the recovery or collection of the debt or moneys secured to be paid by the said bond and indenture of mortgage, or for the recovery or collection of any part thereof; and that said debt or moneys, and no part thereof, have been collected or paid.

And your orator further shows unto your honor, that he has caused examinations to be made of the record of deeds and mortgages in the office of the register of the county of Wayne, where said mortgaged premises are situated, and from which said several examinations it appears, and your orator expressly charges the fact, that Elisha C. Litchfield, who is a citizen of the State of Michigan, and the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, a corporation located and doing business in the State of Michigan, have or claim to have rights and interests in the premises described in the said indenture of mortgage, or in some part or parts thereof, as subsequent purchasers or encumbrancers, or otherwise.

And your orator well hoped that the said defendants would have complied with the reasonable request of your orator herein before mentioned, and would have paid to your orator such principal and interest moneys so as aforesaid due and owing to your orator upon the said bond and indenture of mortgage, in manner aforesaid, or would have released their equity of redemption which they, or any of them, had in the said premises, or any part thereof, to your orator, and would have discharged the same from all liens, encumbrances, titles, or conveyances, which they or any of them had or held, claimed or pretended to have, subsequent to the date of said indenture of mortgage, so that your orator's estate therein might have become perfect and complete, as in equity and good conscience they ought to have done; but now, so it is, may it please your honor, that the said defendants, combining and confederating with divers persons at present unknown to your orator, (but whose names, when discovered, your orator prays may be inserted herein, with apt and proper words to charge them as parties hereto,) how to wrong and injure your orator, and to delay him in the collection, and defraud him in the principal and interest moneys so as aforesaid due from said Carew to your orator upon the said bond and indenture of mortgage

as aforesaid, have hitherto, under various false and frivolous pretences and excuses, wholly neglected and refused to pay the said moneys so due as aforesaid to your orator; all which pretences and excuses, neglects and refusals, are contrary to equity and good conscience. In tender consideration whereof, and for so much as your orator has not a complete and safe remedy in the premises at and by the strict rules of the common law, and is only fully reliable in a court of equity, where matters of this nature are properly cognizable and relievable; nor can your orator foreclose the equity of redemption of the said mortgaged premises, nor safely sell the same for the payment and satisfaction of the principal and interest moneys so as aforesaid due from said Carew to your orator on the said bond and indenture of mortgage, in the manner aforesaid, without the aid and assistance of this honorable court.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, their answers under oath being hereby expressly waived, according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunto written they are required to answer, that is to say :

1st. Whether said defendant, Carew, did or did not become and be indebted to said Atwater in the sum, and at or about the time in this bill stated?

2d. Whether said defendant did or did not execute and deliver to said Atwater the said note at the time, for the purpose, in the manner, and for the sum herein before stated ?

3d. Whether said defendant did or did not execute and deliver to said Atwater the said mortgage, for the purpose, at the time, and in the manner herein before stated ?

4th. Whether the said defendant did not duly acknowledge the execution of said mortgage at the time and in the manner herein before stated ?

5th. Whether said mortgage and certificate of acknowledgment thereof were or were not duly recorded at the time and in the manner hereinbefore stated ?

6th. Whether said bond and mortgage were or were not duly assigned by said Atwater to said complainant at the time and in the manner herein before stated ?

7th. Whether said instrument was or was not duly acknowledged at the time and in the manner herein before stated ; and whether the said Atwater was not, at the time of said assignment, and at the time of filing the original bill in this cause, a citizen of the State of New York ?

8th. Whether the complainant is not now the owner and holder of said mortgage ?

9th. Whether any part of the money which said mortgage was given to secure, has ever been paid by said defendant; and whether

the amount of money now due on the same is not due and owing to the complainant?

10th. Whether the said defendant, Elisha C. Litchfield, and the President, Directors, and Company of the Farmers and Mechanics' Bank, do not claim some interest in said premises as subsequent encumbrancers or otherwise; and if so, what interest; and whether the same is not subject to your orator's claim?

11th. Whether the legal title to the premises, the undivided half of which is covered by complainant's mortgage, is not vested in said Lewis Cass; and whether the same is not held by virtue of certain bonds or contracts made by said Cass to the persons and upon the terms in this bill mentioned; and whether the same have not been assigned, as in said bill mentioned, and the particulars thereof; and whether the interest in said premises that was conveyed by said Emerson to said Avery, is not the interest covered by your orator's said mortgage; and whether there is any prior encumbrance therein, except the claim of said Lewis Cass, and how much is due to said Lewis Cass thereon, and when payable, according to any existing agreements, and the terms of any new agreement or understanding between the said Cass and the said Carew, and the holders of said contracts or bonds; and whether the holders of said contracts or bonds have not erected valuable buildings on said premises for a brewery, and placed machinery and fixtures therein to the amount and value in this bill stated or more, and have not carried on, and are not now carrying on, the business of brewing therein to a large extent?

And that they may come to a fair and just account, touching the amount due from said Carew to your orator upon the said bond and indenture of mortgage herein before mentioned and set forth; and that they, or some of them, may be decreed to pay forthwith to your orator the amount which shall be found due to him thereon, and the interest thereon, together with your orator's reasonable costs and charges in this behalf sustained. And in default thereof, that the defendants herein named, and each of them, and all persons claiming or to claim from or under them, or either of them, may be foreclosed and barred of and from all equity of redemption and claim of, in, and to said mortgaged premises, with the appurtenances; and that all and singular the said mortgaged premises, with the appurtenances, may be sold by the order and decree, and under the direction, of this honorable court, or one of the masters thereof; and the moneys arising from the sale thereof, so far forth as shall be necessary, or so far as the same shall extend, be applied towards satisfying to your orator the full amount of the moneys so as aforesaid secured in and by the said bond and indenture of mortgage, both principal and interest, if the whole shall be then due and unpaid; or if the whole amount shall not be then due, that such part of the said mortgaged premises as may be necessary to discharge the principal and interest moneys then found to be due to him thereon and unpaid, together with your orator's reasonable costs and charges, may be sold as aforesaid, and the proceeds to be applied thereto as aforesaid; or in case it shall appear to this honorable court

that the said mortgaged premises are so situated that the sale of the whole will be most beneficial to the parties concerned, that then the whole of the said mortgaged premises, with the appurtenances, may be sold as aforesaid, and the proceeds of such sale be applied as well to the discharge of the principal and interest moneys then due, and your orator's costs and charges, as towards the whole or residue of the amount secured by the said bond and indenture of mortgage, and not due and payable at the time of such sale; or that this honorable court may direct the balance of the proceeds of such sale, after paying the sum due upon the said bond and indenture of mortgage, with your orator's costs and charges, to be put out at interest, under the direction of this honorable court, for the benefit of your orator, to be paid to him as the remainder of said principal and interest moneys shall become due and payable, and the surplus, if any, for the benefit of the said Joshua L. Carew; and that the said Joshua L. Carew, Elisha C. Litchfield, and the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, and Lewis Cass, and all persons claiming and to claim under them, or either of them, or who have come into the possession of the said mortgaged premises, or any part or portion thereof, during the pendency of this suit, deliver and yield up possession thereof to your orator, or to whomsoever shall become the purchaser or purchasers thereof at the sale, on his, her, or their producing to him or them, or to the person or persons in possession of the said mortgaged premises, or any part thereof, the deed or deeds executed by the master, pursuant to such sale as aforesaid, and a certified copy of the order confirming the report of such sale, after such order has become absolute; or that your orator may have such other relief, or such further relief in the premises, as shall be agreeable to equity and good conscience.

May it please your honor, the premises being considered, to grant to your orator the most gracious writ of subpœna of the people of the State of Michigan, to be issued out of and under the seal of this honorable court, to be directed to the said Joshua L. Carew, Elisha C. Litchfield, the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, and Lewis Cass, therein and thereby commanding them, and each of them, on a certain day, and under a certain penalty, to be therein inserted, personally to be and appear before your honor in this honorable court, then and there to answer all and singular the said premises, and to stand to, and abide, and perform, such order and decree therein as this honorable court shall make therein, and as shall be agreeable to equity and good conscience.

And your orator will ever pray, &c.

(Signed) BARSTOW & LOCKWOOD,
Solicitors and of counsel for complainant.

The defendants, except Lewis Cass, are required to answer the interrogatories numbered respectively 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th,

9th, 10th, 11th, and the said Cass to answer interrogatory numbered 11th only.

(Signed) BARSTOW & LOCKWOOD,
Solicitors and of counsel.

Marked—(Copy.) "Amended foreclosure bill."

Filed August 1, 1849.
(Signed) JNO. WINDER, *Clerk.*

At a session of the circuit court of the United States, for the seventh circuit and district of Michigan, continued and held pursuant to adjournment, at the district court-room in the city of Detroit, on Saturday, the thirtieth day of June, in the year of our Lord one thousand eight hundred and forty-nine; present, hon. Ross Wilkins, district judge.

In the case between—

WILLIAM H. GREENE, complainant,
and
JOSHUA L. CAREW and others, defendants. } In chancery.

Leave granted to complainant to amend his bill of complaint.

Subpœna.

Circuit court of the United States of America, for the seventh circuit and district of Michigan, sitting in chancery.

The President of the United States of America, to Joshua L. Carew, Elisha C. Litchfield, and Lewis Cass, who are citizens of the State of Michigan, and the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, a corporation located and doing business in the city of Detroit, and State of Michigan.

You are hereby commanded to be and appear in the circuit court of the United States of America, for the seventh circuit and district of Michigan, sitting in chancery, before the judges thereof, at the district court-room in the city of Detroit, on the first Monday of September next ensuing, then and there to answer unto an amended bill of complaint exhibited against you as defendant by William H. Greene, who is a citizen of the State of New York, as complainant; and this you shall in no wise omit under the penalty of one thousand dollars.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this first day of August, in the year of our Lord one thousand eight hundred and forty-nine, and of the independence of the United States the seventy-fourth.

(Signed,) JNO. WINDER, *Clerk.*

Memorandum.

The above named defendants are required to enter their appearance

in this suit with the clerk of this court at his office in the city of Detroit, on or before the day to which this writ of subpœna is returnable, otherwise the bill of complaint in this cause will be taken pro confesso against said defendants.

(Signed,) JNO. WINDER, *Clerk.*

Due service of the within subpœna upon the defendant, Lewis Cass, is hereby admitted, and I request the clerk of this court to enter his appearance by me as his solicitor.

(Signed,) HENRY LEDYARD,
Solicitor for Lewis Cass.

Detroit, August 1st, 1849.

Copy of the answer of defendant, Lewis Cass, by Henry Ledyard, his solicitor, filed August 29, 1849.

THE CIRCUIT COURT OF THE UNITED STATES,
For the district of Michigan, ss.

JOSHUA L. CAREW, Elisha C. Litchfield, the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, and Lewis Cass, ads. WILLIAM H. GREENE. } In chancery.

The several answer of Lewis Cass, one of the defendants to the bill of complaint filed in the above cause by William H. Greene, complainant, against Joshua L. Carew, Elisha C. Litchfield, the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, and Lewis Cass, defendants.

This defendant, now and at all times saving and reserving to himself all advantage and benefit of exception to the errors and imperfections contained in the said bill of complaint of the said complainant, for answer thereto, or so much thereof as he is advised it is material for him to make answer unto, that is to say, to interrogatory No. eleven (11) in said bill, he answering admits and says, that the legal title to the premises described in said complainant's mortgage is at present, and long prior to the execution of the mortgage in said bill stated, was, vested in him, the said Lewis Cass, and that on the seventh day of July, eighteen hundred and thirty-five, this deponent did enter into an agreement with one Thomas J. Owen for the sale of said lot, number five, in block six, in the western addition to the city of Detroit, [the] same being a part of the Cass farm, as recorded in the registry of deeds for the city of Detroit, upon terms mentioned [in] the within articles of agreement then entered into between this defendant and said Thomas J. Owen, and a duplicate of which was then delivered to said Owen by this defendant. And this defendant further admits, that lot number eight, in block six, in the western addition to the city of Detroit, be-

ing part of the Cass farm, as recorded in the register's office, was likewise agreed to be sold by this defendant to the said Thomas J. Owen on the same day as that above mentioned, and that articles of agreement relating to the same were then entered into between this defendant and said Thomas J. Owen, and a duplicate thereof duly delivered by said defendant to said Owen.

And this defendant further answering admits, that subsequently, to wit, on the seventh day of November, in the year eighteen hundred and forty-two, he did, by certain articles of agreement then entered into between him and Elisha S. Avery, of Detroit, wherein was recited the foregoing sale to said Thomas J. Owen, agree with said Avery, upon his compliance with certain conditions therein mentioned, to convey to him by warranty deed the one undivided half of said lots five and eight, respectively, in block six aforesaid; and duplicates of which said articles of agreement were duly delivered by said defendant to said Avery, and, as this defendant believes, now in the possession of said Avery or his assigns.

And this defendant further answering says, that he does not of his own knowledge know of any assignment of the original contract of sale made by him to said Thomas J. Owen to the extent of the one undivided half of said lots five and eight, in block six, as having been made by said Thomas J. Owen, except such as is recognised in the articles of agreement between this defendant and the said Elisha S. Avery, and in which it is recited to the effect following, that the said Elisha S. Avery had, on the day aforesaid, become possessed of all and singular the one undivided half of all the interest, claim, right, or demand which was vested in Thomas J. Owen in and to said lots five and eight, in block six, by virtue of the contracts herein before referred to as having been made by this defendant to said Owen; nor does this defendant, of his own knowledge, know of any transfer or assignment on the part of said Avery of the interest claimed by him under or by virtue of the aforesaid articles of agreement to the parties *to the parties* named in said complainant's bill of complaint, but that if such assignment did take place it conveyed the interest of said Avery in the property described in said complainant's mortgage, as this defendant believes.

And this defendant further answering says, that *that* he does not, of his own knowledge, know whether or not there is any claim, lien, or encumbrance upon said premises, described in said complainant's mortgage, prior to the claim of this defendant, but believes there is not.

And this defendant further answering says, that, for the one undivided half interests in said lots five and eight, in block six, mentioned in said mortgage, and more particularly set forth in said articles of agreement, so made by and between this defendant and said Elisha S. Avery, there was due to this defendant, as the purchase money for such undivided half interests in said lots, on the first day of July, in the year eighteen hundred and forty-nine, the sum of eleven hundred and sixty-five dollars, ($1,165;) but which said sum was not then, nor

at any time since, paid upon said contracts of sale to this defendant. And the payment of which said principal sum was then and there extended, by this defendant, until the said first day of July, in the year eighteen hundred and fifty-three, (A. D. 1853;) interest being thereon payable semi-annually, according to the terms of such extended payment.

And this defendant further answering says and admits, that the holders of said contracts of sale, or some other persons, have erected what appear to this defendant to be valuable buildings and fixtures upon said premises, described in said contracts, and in said complainant's mortgage, and that a brewery is at present carried on within such buildings so erected upon said lots; but by whom all such buildings and improvements were erected, or the precise amount invested in their construction, or for or on account of whom said business of brewing on said premises is now being conducted, this defendant does not, of his own knowledge, know, and therefore cannot state, in this his answer to the several inquiries directed by said complainant to him, and embraced in the close of said interrogatories, numbered eleven, in said bill set forth.

And this defendant humbly insists and submits, that he has herein before answered said inquiry No. eleven as fully as his information admits of in the premises; and he denies all combination and confederacy charged against him in said bill of complaint; without this, that any other matter or thing in the said bill of complaint contained, and not herein and hereby well and sufficiently answered unto, confessed and avoided, traversed or denied, is true to his knowledge or belief.

All which matters and things this defendant, so far as the same devolves upon him to show, and as this honorable court shall direct, is ready to aver, prove, and maintain; and prays to be hence dismissed, with his costs and charges in this behalf most wrongfully sustained.

(Signed) HENRY LEDYARD,
Solicitor for defendant, Lewis Cass.

Copy.—Precipe of William Hale, solicitor, for entering the appearance of defendants. September 1, 1849.

Circuit court of the United States, for the district of Michigan.

WILLIAM H. GREENE
vs.
JOSHUA L. CAREW, Elisha C. Litchfield, the President, Directors, & Company of the Farmers and Mechanics' Bank of Michigan, and Lewis Cass.

Please enter my appearance for the defendants, Joshua L. Carew, Elisha C. Litchfield, and the President, Directors, & Company of the Farmers and Mechanics' Bank of Michigan, and also an order that the

complainant's solicitor deliver to the solicitor of the said defendants a copy of the bill filed in this cause, within twenty days after service of notice of said order, &c.

(Signed) WM. HALE,
Solicitor for defts., Carew, Litchfield, and the Bank.

To JOHN WINDER, esq., *Clerk, &c.*

Filed September 1, 1849.
(Signed) JOHN WINDER, *Clerk.*

Copy.—Order entering appearance of defendants, Carew, Litchfield, and the Farmers and Mechanics' Bank. Sept. 1, 1849.

WILLIAM H. GREENE
vs.
JOSHUA L. CAREW, Elisha C. Litchfield, the President, Directors, & Company of the Farmers and Mechanics' Bank of Michigan, and Lewis Cass. } In chancery.

The defendants, Joshua L. Carew, Elisha C. Litchfield, and the President, Directors, & Company of the Farmers and Mechanics' Bank of Michigan, by William Hale, their solicitor, enter their appearance in this case; and on motion of said solicitor, on behalf of said defendants, ordered, that complainant's solicitors deliver to the solicitor of said defendants a copy of complainant's said bill of complaint within twenty days after service of notice of this order.

(Signed) WM. HALE,
Solicitor for defts., Carew, Litchfield, and the Bank.
Pr. WINDER.

Copy.—Motion of complainant that the answers of the defendants, Carew and Litchfield, be taken from the files, and that the amended bill of complaint be taken as confessed against said defendants.

The circuit court of the United States, for the district of Michigan, in chancery.

WILLIAM H. GREENE
vs.
JOSHUA L. CAREW, Elisha C. Litchfield, Lewis Cass, and the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan.

The complainant, in addition to the motion already made to take the answers of the defendants, Carew and Litchfield, from the files in above suit, now moves the court that said answers be taken from the files, and that the amended bill of complaint be taken as confessed against said defendants.

(Signed) BARSTOW & LOCKWOOD,
Complainant's Solicitors.

Motion made and filed October 15, 1849, and entered same day.
(Signed) JNO. WINDER, *Clerk.*

Copy.—Order pro confesso against the President, Directors & Company of the Farmers and Mechanics' Bank.

The circuit court of the United States, for the district of Michigan, in chancery.

WILLIAM H. GREENE
vs.
JOSHUA L. CAREW, Elisha C. Litchfield, Lewis Cass, and the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan.

The defendants, the President, Directors, & Company of the Farmers and Mechanics' Bank of Michigan, having failed to answer the amended bill of complaint within the time required by the rules of this court, their default for want of answer is hereby entered, and it is ordered that said amended bill of complaint be taken as confessed against them.
(Signed) BARSTOW & LOCKWOOD,
Complainant's Solicitors.

The clerk will please enter the order to take bill, as confessed as above, against the Farmers and Mechanics' Bank.
(Signed) BARSTOW & LOCKWOOD,
Solicitors for complainant.

Filed and entered October 15, 1849.
(Signed) JNO. WINDER, *Clerk.*

Copy.—Affidavit of William Hale, defendant's solicitor.

Circuit court of the United States, for the district of Michigan.

WILLIAM H. GREENE
vs.
JOSHUA L. CAREW, Elisha C. Litchfield, the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, and Lewis Cass. } In chancery.

DISTRICT OF MICHIGAN, *ss.*

William Hale, the solicitor of Joshua L. Carew and Elisha C. Litchfield, two of the above named defendants, being first duly sworn, doth depose and say, that on the fourth day of August last past, Thomas W. Lockwood, esq., one of the solicitors of the above named complainant, served personally upon this deponent a copy of the amended bill, filed in this cause, by delivering the same to this deponent, at the

office of this deponent, in Detroit; and that the said copy was addressed to this deponent as the solicitor of the said defendants, Carew and Litchfield.

This deponent further says, that on the eighth day of October instant, he served a copy of the answer filed in this cause, upon the complainant's solicitors, at their office, in Detroit, by delivering the same to the clerk of the said solicitors, who received the same, and endorsed thereon the time of such receipt, and that at the time of such service the said solicitors were absent from their said office.

(Signed) WILLIAM HALE.

Subscribed and sworn to this 13th day of October, A. D. 1849, before me in open court.

(Signed) JOHN WINDER, *Clerk.*

Filed October 17, 1849.

(Signed) JOHN WINDER, *Clerk.*

Copy.—Affidavit of Samuel Barstow.

The circuit court of the United States, for the district of Michigan.

WILLIAM H. GREENE vs. JOSHUA L. CAREW, Elisha C. Litchfield, Lewis Cass, and the President Directors, and Company of the Farmers and Mechanics' Bank of Michigan.	In chancery.

DISTRICT OF MICHIGAN, *ss.*, *Wayne county.*

Samuel Barstow, being duly sworn, says, that Bailey is not a citizen of the State of Michigan, but resides, as this deponent verily believes from inquiry, at Philadelphia, in the State of Pennsylvania.

This deponent further says, that the original assignment of the mortgage set forth in the bill of complaint to the complainant is [in] the hands of the solicitor for the complainant; that the same is duly acknowledged before a commissioner for the State of Michigan, and signed and sealed.

(Signed) SAMUEL BARSTOW.

Subscribed and sworn, this 19th day of October, A. D. 1849, before me.

(Signed) HORATIO G. SPAFFORD,
Notary public, Wayne county, Michigan.

At a session of the circuit court of the United States, for the seventh circuit and district of Michigan, continued and held pursuant to adjournment, at the district court-room, in the city of Detroit, on Monday, the twenty-ninth day of October, in the year of our Lord one thousand eight hundred and forty-nine; present, honorable Ross Wilkins, district judge.

WILLIAM H. GREENE
vs.
JOSHUA L. CAREW, Elisha C. Litchfield, Lewis Cass, and the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan. } In chancery.

The motion heretofore made by defendants, Joshua L. Carew and Elisha C. Litchfield, for leave to file their answer to complainant's bill of complaint, having been argued by counsel, and by the court fully considered, the court now here deny and overrule said motion, with costs against said defendants; and on motion of complainant, heretofore made, ordered that complainant's bill of complaint, as amended and filed, be, and the same is hereby, taken pro confesso against said defendants, Carew and Litchfield, and that the case be referred to one of the masters of this court, to compute and ascertain the amount due said complainant upon the bond and mortgage mentioned and set forth in the bill of complaint in this cause, and make report thereof to this court with all convenient speed.

(Signed) ROSS WILKINS.

Circuit court of the United States, for the district of Michigan.

WILLIAM H. GREENE
vs.
JOSHUA L. CAREW, Elisha C. Litchfield, the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, and Lewis Cass. } In chancery.

I hereby consent, on the part of the defendant, Lewis Cass, *than* an order of reference in this cause be entered, to compute the amount due the complainant in this cause, waiving notice to me of such computation, and that on coming in of the report a decree may be entered for foreclosure and sale of the mortgaged premises, subject to all the rights and interests of Lewis Cass, as set forth in answer on file.

(Signed) HENRY LEDYARD,
Solicitor for L. Cass.

Detroit, Nov. 2, 1849.

Defendants' order, Nov. 5, 1849.

Circuit court of the United States, for the district of Michigan.

WILLIAM H. GREENE
vs.
JOSHUA L. CAREW, Elisha C. Litchfield, the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, and Lewis Cass.

The bill in this cause having been taken as confessed against all the defendants, except Lewis Cass, and on filing the consent of said Cass, by Henry Ledyard, esq., his solicitor, it is ordered, that it be referred to one of the masters of this court, residing in the city of Detroit, to ascertain and compute the amount due to the complainant on the bond and mortgage of complainant in his bill, for principal and interest to the date of his report, and that said master report thereon with all convenient speed.

(Signed) BARSTOW & LOCKWOOD,
Complainant's solicitors.

Filed and entered in open court, November 5, 1849.
(Signed) JNO. WINDER, *Clerk.*

Copy.

Master's report of amount due on bond and mortgage, made and filed November 8, 1849.

Circuit court of the United States, for the district of Michigan. In chancery. In the case of

WILLIAM H. GREENE, complainant,
vs.
JOSHUA L. CAREW, Elisha C. Litchfield, the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, and Lewis Cass, defendants.

To the judges of the circuit court of the United States, for the district of Michigan.

In pursuance of an order of this court, made and entered in this cause on the 29th day of October, A. D. 1849, and also another order of said court, made and entered in this cause on the 5th day of November, A. D. 1849, by both of which orders it was, among other things, referred to one of the masters of this court to compute and ascertain the amount due to said complainant upon the bond and mortgage mentioned and set forth in the bill of complaint and amended bill of complaint filed in this cause, and to report thereon to this court with all convenient speed:

I, the undersigned, one of the masters of said court, having been charged with the execution of said orders, do respectfully certify and report, that on the 5th day of November instant, I issued a summons directed to the said defendants, requiring them to appear before me on this 8th day of November, to attend to a hearing of the matters in said cause, in reference before me as such master, pursuant to said order, with a notice or underwriting attached to said summons, as follows: "To attend to the computation of the amount due for principal and interest on the bond and mortgage mentioned and set forth in the bill of complaint in this cause, and to make report thereon." Which sum-

mons has been this day returned to me personally served upon William Hale, as solicitor for the said defendants, (except Lewis Cass,) on the 5th day of November instant, and the same, together with the proof of such service, is hereto attached and made a part of this report.

And I do further certify and report, that on this 8th day of November, 1849, I attended at the time and place appointed in said summons for the hearing of said matter, and was attended by Mr. Barstow, one of the solicitors for the complainant; no person having appeared for said defendants, or either of them, I thereupon proceeded ex parte, and computed and ascertained the amount so due on said bond and mortgage for principal and interest, and report the amount so due this day at the sum of three thousand six hundred and sixty-nine dollars and eight cents, ($3,669.08.)

And I do further certify and report, that the schedule hereto annexed, and marked "A," contains a statement and account of the principal and interest money due on said bond and mortgage, the period of the computation of the interest, and its rate.

The bond and mortgage referred to in above report and in said bill of complaint, are hereto annexed, the bond marked "exhibit C," and the mortgage marked "exhibit D."

All which is repectfully submitted.

Dated November 8, 1849.

(Signed) GEO. G. BULL,
Master in chancery, circuit court, U. S., dist. of Michigan.

Schedule "A," referred to in the preceding report.

1 bond in the penal sum of $6,000, dated August 17, 1849, conditioned to pay the sum of $3,000 in 3 equal annual instalments of $1,000 each, from the 1st day of September, A. D. 1846, with interest on the whole sum remaining unpaid, at the rate of 7 per cent. *per cent.* per annum, to be computed from the 1st day of September next, (1846,) and to be paid semi-annually on the first days of March and September in each year.

Which bond is accompanied with a mortgage of same date.

Interest on said sum of - - - - - -	$3,000 00
September 1st, 1846, to November 8, 1849, being 3 years 2 months and seven days, at 7 per cent. per annum - - - - - - - -	669 08
Amount due November 8, 1849 - - - -	$3,669 08

Dated November 8, 1849.

Respectfully submitted,
GEO. G. BULL,
Master in chancery.

Copy of master's summons, referred to in preceding report.

Circuit court of the United States, for the district of Michigan. In chancery. In the case of

WILLIAM H. GREENE, complainant,
vs.
JOSHUA L. CAREW, Elisha C. Litchfield, the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, and Lewis Cass, defendants.

By virtue of an order, made and entered in the above cause, by the circuit court of the United States, for the seventh circuit and district of Michigan, in chancery sitting, I, George G. Bull, one of the masters of said court, do summon you, the said defendants, to appear at my office, in the United States circuit and district court-house, in the city of Detroit, on Thursday, the eighth day of November instant, at ten o'clock, in the forenoon of that day, to attend to a hearing of the matters in said cause, in reference before me as such master, pursuant to said order; and hereof fail not at your peril.

Dated the 5th day of November, A. D. 1849.

(Signed) GEO. G. BULL,
Master in chancery, circuit court, U. S., dist. of Mich.

To the above named defendants or their solicitor.

Underwriting.

To attend to the computation of the amount due for principal and interest on the bond and mortgage mentioned and set forth in the bill of complaint in this cause, and to make report thereon.

(Signed) GEO. G. BULL,
Master in chancery.

(Signed) BARSTOW & LOCKWOOD,
Solicitors for complainant.

Proof of service of above summons.

DISTRICT OF MICHIGAN, *ss.*

Horatio G. Spafford being duly sworn says, that on the fifth day of November instant, he served the within (above) summons on William Hale, solicitor for the within (above) named defendants, except Lewis Cass, by delivering to him a true copy thereof at his office in the city of Detroit.

(Signed) HORATIO G. SPAFFORD.

Sworn and subscribed this 8th day of November, 1849.

(Signed) ADD'N MANDELL,
Notary public, Wayne co., Michigan.

2552.

Copy of the bond referred to in said report.

Know all men by these presents, that I, Joshua L. Carew, of Detroit, State of Michigan, am held and firmly bound unto Samuel T. Atwater, of Buffalo, in the State of New York, in the sum of six thousand dollars, lawful money of the United States of America, to be paid to the said Samuel T. Atwater, or to his certain attorney, heirs, executors, administrators, or assigns; to which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, and each and every of them, firmly by these presents. Sealed with my seal, and dated the seventeenth day of August, one thousand eight hundred and forty-six.

The condition of this obligation is such, that if the above bounden Joshua L. Carew, his heirs, executors, and administrators, or any of them, shall well and truly pay, or cause to be paid, unto the above mentioned Samuel T. Atwater, or to his certain attorney, executors, administrators, or assigns, the just and full sum of three thousand dollars, in three equal annual payments of one thousand dollars each, from the first day of September, one thousand eight hundred and forty-six, with interest on the whole sum remaining unpaid, at the rate of seven per cent. per annum, to be computed from the first day of September next, and to be paid semi-annually on the first days of March and September in each year, without any fraud or other delay, then this obligation to be void and of none effect, otherwise to remain in full force and virtue.

(Signed) JOSHUA L. CAREW. [L. S.]

Sealed and delivered in presence of—
W. T. YOUNG.

Copy of the mortgage referred to in above master's report.

This indenture, made this seventeenth day of August, in the year one thousand eight hundred and forty-six, between Joshua L. Carew, of Detroit, State of Michigan, of the first part, and Samuel T. Atwater, of Buffalo, State of New York, of the second part. Whereas the said Joshua L. Carew is justly indebted to the said party of the second part in the sum of three thousand dollars, secured to be paid by his certain bond or obligation bearing even date with these presents, in the penal sum of six thousand dollars lawful money as aforesaid, conditioned for the payment of the said first mentioned sum of three thousand dollars, in three equal annual payments of one thousand dollars each, from the first day of September, one thousand eight hundred and forty-six, with interest on the whole sum remaining unpaid at the rate of seven per centum per annum, to be computed from the first day of September next, and to be paid semi-annually on the first days of March and September in each year, as by the said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear.

Now, this indenture witnesseth, that the said party of the first part,

for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with the interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby confessed and acknowledged, hath granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, release, convey, and confirm, unto the said party of the second part, and to his heirs and assigns forever, all "the equal undivided half of all those certain pieces or parcels of land situate, lying, and being in the city of Detroit aforesaid, on what is called the "Cass farm," being lots numbered five and eight (5 and 8) in block numbered six, (6,) with the undivided half of the brick brewery buildings, with the fixtures, apparatus, and furniture, reference being had for further description of said lots to the bond or bonds executed by Lewis Cass to Thomas J. Owen for the conveyance of said lots hereby conveyed.

The said Joshua L. Carew, party of the first , for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, to and with the said party of the second part, his heirs, executors, and administrators, and assigns, that he and they shall and will, at their own proper costs and charges, from time to time sufficiently insure the buildings, tenements, and erections on the above described lands and premises, from loss or damage by fire during the continuance of these presents, to an amount equal to what may be unpaid of the moneys secured hereby in some or one solvent insurance company, and shall and will transfer, set over, and assign all and every policy or policies of insurance, and all certificates of renewal of such insurance, made or to be made, for or upon the said buildings, tenements, and erections, and all benefit of such policy, policies, and certificates of renewal unto the said party of the second part, his heirs, executors, administrators, and assigns; and in default thereof, it shall be lawful for the said party of the second part to cause the said buildings, tenements, and erections to be insured against loss or damage by fire in some solvent company, for his own benefit, and the premium or premiums so paid by said party of the second part shall be a charge or lien upon the premises hereby conveyed, and shall be deemed to be secured in and by these presents.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances; to have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit, and behoof forever. Provided

always, and these presents are upon this express condition, that if the said party of the first part, his heirs, executors, or administrators, shall well and truly pay unto the said party of the second part, his executors, administrators, or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time, and in the manner, mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease and determine, and be null and void. And the said Joshua L. Carew, for himself, his heirs, executors, and administrators, do covenant and agree to pay unto the said party of the second part, his executors, administrators, or assigns, the said sum of money, and interest, as mentioned above, and expressed in the condition of said bond.

And if default shall be made in the payment of the said sum of money above mentioned, or the interest that may grow due thereon, or of any part thereof, that then, and from thenceforth, it shall be lawful for the said party of the second part, his executors, administrators, and assigns, to enter into and upon all and singular the premises hereby granted, or intended so to be, and to sell and dispose of the same at public auction according to the act in such case made and provided; and, as the attorney of the said party of the first part, for that purpose by these presents duly authorized, constituted, and appointed, to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in the law for the same, in fee simple, and out of the moneys arising from such sale to retain the principal and interest which shall then be due on the said bond or obligation, together with the costs and charges of advertisement and sale of the same premises, rendering the overplus of the purchase money (if any there shall be) unto the said party of the first part, his heirs, executors, administrators, or assigns. And it is hereby expressly covenanted by the said party of the first part, that this mortgage shall not be subject to any provision of law now being or to be hereafter in force requiring the appraisal or set-off of said mortgaged premises.

In witness whereof the said party of the first part to these presents has hereunto set his hand and seal the day and year first above written.

(Signed) JOSHUA L. CAREW. [L. S.]

Sealed and delivered in the presence of—

W. T. YOUNG,
E. S. AVERY.

STATE OF MICHIGAN,
County of Wayne, ss.

On this 17th day of September, A. D., 1840, before me, a justice of the peace in and for said county, personally appeared the above named Joshua L. Carew, known to me to be the person who executed

the foregoing mortgage, and acknowledged that he executed the same freely and for the purposes therein expressed.

(Signed) WILLIAM T. YOUNG,
Justice of the peace, Wayne county, Michigan.

REGISTER'S OFFICE, *Wayne county.*

Received for record this 17th day of September, A. D. 1846, at 5 o'clock p. m., and recorded in liber 7, folio 346, 347, 348, 349.

(Signed) SILAS A. BAGG, *Register.*

Copy.—Affidavit of T. W. Lockwood, of regularity of proceedings to take bill of complaint as confessed.

Circuit court of the United States, for the district of Michigan.

WILLIAM H. GREENE
vs.
JOSHUA L. CAREW, the President, Directors, and Company of the Farmers and Mechanics' Bank, Elisha C. Litchfield, and Lewis Cass. } In chancery.

DISTRICT OF MICHIGAN, *ss.*

Thomas W. Lockwood, one of the solicitors for the complainant, being duly sworn, says, that the bill in this cause has been regularly taken as confessed against the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan for want of appearance after due service of the subpœna issued in this cause; and that the same was taken as confessed against the defendants, Litchfield and Carew, by special order of the court on a special motion therefor; and that the proceedings to take said bill as confessed have been regular, according to the course and practice of this court, as this deponent verily believes.

(Signed) T. W. LOCKWOOD.

Sworn and subscribed, this 14th day of November, 1849, before me,
GEO. G. BULL,
Master in chancery, cir. ct. U. S., dist. of Mich.

In chancery.

At a session of the circuit court of the United States, for the seventh circuit and district of Michigan, continued and held pursuant to adjournment, at the district court-room in the city of Detroit, on Wednesday, the fourteenth day of November, in the year of our Lord one thousand eight hundred and forty-nine; present, hon. Ross Wilkins, district, judge.

In the case between—

WILLIAM H. GREENE, complainant, and JOSHUA L. CAREW, Elisha C. Litchfield, the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, and Lewis Cass, defendants.	In chancery.

This cause came on to be heard, and was argued by counsel on bill taken as confessed against all the defendants, except Lewis Cass, and on the answer of said Cass, and his consent by H. Ledyard, his solicitor, on file.

And thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

On reading and filing the report of George G. Bull, one of the masters of this court, which report bears date the eighth day of November, in the year one thousand eight hundred and forty-nine, and was made in pursuance of an order of this court, heretofore made in this cause, referring it to one of the masters of this court to compute the amount due to the complainant on the bond and mortgage mentioned and set forth in said bill of complaint, from which it appears that there was due to the said complainant, at the date of said report, for said principal and interest, the sum of three thousand six hundred and sixty-nine dollars and eight cents; and said bill having been so taken as confessed on special motion and order of the court, upon previous agreement, against defendants, Carew and Litchfield; and on reading and filing the affidavit of T. W. Lockwood, solicitor for complainant, showing the regularity of the proceedings in this cause, to take said bill of complaint as confessed against defendants, the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan; and on motion of Barstow and Lockwood, counsel for the complainant, it is ordered, adjudged, and decreed, and this court, by virtue of the authority therein vested, doth order, adjudge, and decree, that the said report, and all things therein contained, do stand ratified and confirmed. And it is further ordered, adjudged, and decreed, that the said defendant, Joshua L. Carew, pay, or cause to be paid, to the said complainant, or to his solicitors, the amount so reported due as aforesaid, together with the interest and costs, on or before the fourteenth day of March, in the year one thousand eight hundred and fifty; and in default thereof, that all and singular the said mortgaged premises mentioned in the bill of complaint in this cause, and hereinafter described, or so much thereof as may be sufficient to raise the amount due to the complainant for the principal, interest, and costs in this case, and which may be sold separately without material injury to the parties interested, be sold at public auction, by or under the direction of George G. Bull, one of the masters of this court, at any time after the said fourteenth day of March, in the year one thousand eight hundred and fifty, subject to prior rights and legal title of Lewis Cass to the said real estate; that the said sale be made in the county where the said mortgaged premises, or the greater part thereof, are

situated; that the master give public notice of the time and place of such sale, according to the course and practice of this court; and that the complainant, or any of the parties in this cause, may become the purchaser; that the master execute a deed to the purchaser or purchasers of the mortgaged premises on the said sale, subject to the legal rights of said Cass; and that the said master, out of the proceeds of said sale, pay to the complainant or his solicitors the costs in this suit to be taxed, and also the amount so reported due as aforesaid, together with legal interest thereon, from the date of said report, or so much thereof as the purchase money of the mortgaged premises will pay of the same; and that the master take receipts for the amounts so paid, and file the same with his report; and that he bring the surplus moneys arising from said sale, if any there be, into court, without delay, to abide the farther order of this court. And it is further ordered, adjudged, and decreed, that all the defendants, except Lewis Cass, and all persons claiming, or to claim, from or under them, be forever barred and foreclosed, of and from all equity of redemption, and claim, of, in, and to said mortgaged premises, and every part and parcel thereof. And it is further ordered, that the purchaser or purchasers of said mortgaged premises, at such sale, be let into possession thereof; and that any of the parties in this cause, who may be in possession of said premises, or part thereof, and any such person who, since the commencement of this suit, has come into possession under them or either of them, deliver possession thereof to such purchaser or purchasers, on production of the master's deed for such premises, and a certified copy of the order confirming the report of such sale, after such order has become absolute. And it is further ordered and decreed, that if the moneys arising from said sale shall be insufficient to pay the amount so reported due to the complainant, with interest and cost, and expenses of sale as aforesaid, that said master specify the amount of such deficiency in his report of said sale; and that, on the coming in and confirmation of said report, the defendant, Joshua L. Carew, who is liable personally for the debt secured by the said mortgage, pay to the complainant the amount of such deficiency, with interest thereon from the date of such report; and that the complainant have execution therefor.

The description and particular boundaries of the property, authorized to be sold under and by virtue of this decree, so far as the same can be ascertained from the mortgage above referred to, or from the bill of complaint in this cause, are as follows, viz:

All the equal undivided half of all those certain pieces or parcels of land, situate, lying, and being in the city of Detroit, county of Wayne, and State of Michigan, on what is called the Cass farm, being lots numbered five and eight, in block numbered six, with the undivided half of the brick brewery building, with the fixtures, apparatus, and furniture, and being the interest in said premises, called the Avery interest,

and which was conveyed by Curtis Emerson to Elisha S. Avery, and by said Avery to Joshua L. Carew.

(Signed) ROSS WILKINS,
District judge.

Copy decree taken, filed, and entered November 14, 1849.
(Signed) JNO. WINDER, *Clerk.*

Copy.—Affidavit of T. W. Lockwood, as basis of motion to amend bill.

Circuit court of the United States, for the district of Michigan.

WILLIAM H. GREENE, complainant,
vs.
JOSHUA L. CAREW, Elisha C. Litchfield, the President, Directors & Company of the Farmers and Mechanics' Bank of Michigan, and Lewis Cass, defendants. } In chancery.

DISTRICT OF MICHIGAN, *ss.*

Thomas W. Lockwood, one of the solicitors for the complainant in the above entitled cause, being duly sworn, says, that the bill in this cause was filed to foreclose a mortgage, executed by defendant, Carew, to one Samuel T. Atwater, on the seventeenth day of August, one thousand eight hundred and forty-six; that the said Atwater was at that time, and at the time of filing *the filing* the bill in this cause, and still is, as this defendant is informed and believes, a citizen of the State of New York, residing at Buffalo in the said State, and that the complainant holds the said mortgage by assignment from the said Samuel T. Atwater. That at the time of filing the bill in this cause it was not considered necessary or material to aver in the bill the citizenship in another State of the said Samuel T. Atwater, as such had then been the decision of this court, although the said Atwater is averred, in describing the mortgage in said bill, to be "of Buffalo, in the State of New York," and so described in said mortgage.

(Signed) T. W. LOCKWOOD.

Subscribed and sworn, this 27th day of March, A. D. 1850, before me,

HORATIO G. SPAFFORD,
Notary public, Wayne county, Michigan.

Copy.—Notice of motion to amend bill.

SIR: Take notice, that on Monday, the first day of April next, at the opening of the court on that day, or as soon thereafter as counsel can be heard, at the United States court-room in the city of Detroit, we shall move the court, on an affidavit of which the above is a copy,

that the complainant have leave to amend the bill in this cause, by averring the citizenship of Samuel T. Atwater to have been in the State of New York at the time of filing said bill, without prejudice to the decree; or that *that* the decree may be vacated and said amendment be made, and that defendants answer said bill within a short time to be fixed by the court; and for such other or further order, or both, as to the court may seem proper in the premises.

Yours, &c.

(Signed) BARSTOW & LOCKWOOD,
Complainant's solicitors.

To Wm. Hale & Henry Ledyard,
Defendants' solicitors.

March 27, 1851.

Copy.—Proof of service of above motion on defendants.

District of Michigan, *ss.*

Thomas W. Lockwood being duly sworn says, that on the 27th day of March, 1850, he delivered a copy of the within affidavit and notice of motion to William Hale, esq., the solicitor for the defendant, Litchfield, and the President, Directors, & Company of the Farmers and Mechanics' Bank, personally, at his office in Detroit.

(Signed) T. W. LOCKWOOD.

Subscribed and sworn, this 1st day of April, 1850, before me,
HORATIO G. SPAFFORD,
Notary public, Wayne county, Michigan.

Copy.—Order to vacate decree and amend bill, by stating the citizenship of the assignor of the mortgage.

Circuit court of the United States, for the district of Michigan.

William H. Greene vs. Joshua L. Carew, Elisha C. Litchfield, the President, Directors, & Company of the Farmers and Mechanics' Bank of Michigan, and Lewis Cass.	In chancery.

On an affidavit of the solicitor for the complainant, filed in this cause on the first day of April, 1850, and on motion on that day made on the part of the complainants, which was continued over until the fifteenth day of April, 1850, and then ordered, by consent of parties, to be heard before the district judge at chambers; and hearing Mr. Lockwood for the complainant, and Mr. Hale for the defendants, it is ordered, that the decree entered in this cause on the fourteenth day of November, 1849, be set aside and vacated, and that the complainants have leave to amend their bill on file in this cause, by stating the citizenship of

the assignor of the mortgage set forth therein; and that a copy of said bill, as amended, be served on the solicitors for the defendants who have appeared in this cause, and that the defendants have from the date of such service twenty days to file their answer to said bill, and serve a copy on the complainant's solicitor. And it is further ordered, that this order be entered and tested as of the fifteenth day of April, 1850, in open court.

(Signed) ROSS WILKINS, *Judge.*

Filed April 30, 1850, as of the 15th April, 1850.

(Signed) JNO. WINDER, *Clerk.*

Copy.—Joint and several answer of defendants, Carew and Litchfield.

Circuit court of the United States, for the district of Michigan. In chancery.

The joint and several answer of Joshua L. Carew and Elisha C. Litchfield, defendants, to the amended bill of complaint of William H. Greene, complainant, against the defendants, Joshua L. Carew, Elisha C. Litchfield, the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, and Lewis Cass.

These defendants, reserving to themselves all right and exception to the said bill of complaint, for answer thereto severally say, they admit it to be true that the said bond and mortgage, mentioned and set forth in the complainant's bill, were made and executed by the said Joshua L. Carew, or were of the date, purport, and effect, as in the said bill of complaint in that behalf stated; but, for greater certainty, these defendants crave leave to refer to the said bond and mortgage, when the same shall be produced.

These defendants further severally answering say, that they have never been informed, save by the said complainant's bill, and cannot set forth, as to their belief or otherwise, whether the said Samuel T. Atwater, in said bill mentioned, assigned to the said complainant all his right, title, or interest, in said bond and mortgage; therefore leave the said complainant to such proof as he shall be advised to produce.

And these defendants, further severally answering, deny that the said complainant paid any valuable consideration for said pretended assignment, or that he is now the bona fide owner of said bond and mortgage; but, on the contrary thereof, these defendants have been informed and believe, that the said assignment, if made at all, was made and executed to the said complainant in trust, and for the benefit of other persons, and that no part of the sum of money claimed to be due thereon is due to the said complainant.

These defendants, further severally answering, say, they admit it to be true that the legal title of lots five and eight, described in said bill of complaint, is vested in said Lewis Cass, by whom, as is stated in

said complainant's bill, and as these defendants are informed and believe, bonds or contracts were executed and delivered to one Thomas J. Owen by the said Lewis Cass, at the time and in the manner set forth in the said bill of complaint, whereby the said Lewis Cass agreed to sell and convey the said premises to the said Owen, or his assigns, upon payment of the sums of money specified therein; and that there now remains due and unpaid large sums of money, but the exact amount thereof these defendants have not been informed, and cannot state.

These defendants, further severally answering, say, that the said Thomas J. Owen afterwards sold, assigned, and conveyed, to the said Oren Moore, Curtis Emerson, and Royal H. Waller, the equitable interest acquired by him under, and by virtue of, the said bonds or contracts so executed by the said Lewis Cass, as in said bill of complaint set forth; and that by subsequent conveyances the said equitable interest in said premises, together with the buildings, fixtures, and improvements erected thereon, became vested in equal undivided portions in said Oren Moore and Curtis Emerson. That on or about the seventh day of November, one thousand eight hundred and forty-two, the said Curtis Emerson sold and conveyed his interest in said premises, being an undivided half, to the said Elisha S. Avery; that, by subsequent conveyances, the said equitable interest in said lots and improvements owned by the said Oren Moore were purchased by, and became vested in, the said Curtis Emerson, who sold and conveyed the same, by a good and sufficient deed, to the said Joshua L. Carew, one of these defendants, on the twenty-seventh day of April, one thousand eight hundred and forty-six. That the said Elisha S. Avery sold and conveyed to the said Joshua L. Carew, by a like sufficient deed, his equitable interest in said premises and improvements, being the other undivided half, on the seventeenth day of August, in the year last aforesaid; all which will more fully and at large appear by reference to said deeds of conveyance, duly acknowledged and recorded with the register of deeds for the county of Wayne; to which deeds, or to the records thereof, these defendants, for greater certainty, crave leave to refer. That, by the said last mentioned deeds of conveyance, the equitable interest in said premises acquired by the said Thomas J. Owen, became vested in the said Joshua L. Carew.

These defendants, further severally answering, say, that the sums of money due and owing to the said Lewis Cass on the said lands or contracts, have not been paid according to the tenor and conditions thereof; but that, on or about the first day of July, one thousand eight hundred and forty-seven, as these defendants have been informed and believe, the *the* said bonds or contracts became forfeited in law by the non-payment of the sums of money due thereon, whereby the right accrued to said Cass to enter and repossess himself of said lots and premises, and that the said forfeiture has not been waived by said Cass, except by a conditional understanding or agreement.

The said defendant, Elisha C. Litchfield, further severally answer-

ing, says, he admits it to be true that the persons for that purpose in said bill of complaint mentioned, have or claim to have some rights or interest in said premises, and that this defendant's interest is contained in a certain indenture of mortgage of said lots or premises, made and executed by the said Joshua L. Carew to this defendant, on the fifteenth day of February, one thousand eight hundred and forty-eight, to secure to this defendant the payment of twenty-five thousand dollars; which said mortgage has been duly acknowledged and recorded in the office of the register of deeds for the county of Wayne, and that the whole amount thereof is now due and unpaid; to which said mortgage, or to the record thereof, this defendant, for greater certainty, craves leave to refer.

These defendants, further severally answering, say, that before the execution of the said complainant's mortgage, to wit, on the twelfth day of November, one thousand eight hundred and forty-two, the undivided half of said lots five and eight were conveyed by the said Oren Moore, who was then the owner of the undivided half of said equitable interest, to one Roger Fitzpatrick, of the city of Detroit, by deed of mortgage, to secure to him, the said Roger, the payment of the sum of one thousand six hundred and fifty-three dollars and ninety-five cents, which said mortgage was duly acknowledged, and afterwards, on the said twelfth day of November, in the year last aforesaid, the same was duly recorded with the register of deeds of the county of Wayne; which said mortgage, or the record thereof, these defendants, for greater certainty, crave leave to refer; and these defendants severally aver that the said mortgage has not been paid, but that the same is in full force and effect, and that the sum of twelve hundred dollars and upwards remains due thereon to the said Fitzpatrick, who is still the owner and holder thereof.

These defendants, further severally answering, say, that after the execution of the said complainant's mortgage, and before the filing of the said bill of complaint, to wit, on the ninth day of November, one thousand eight hundred and forty-six, the said Joshua L. Carew conveyed the undivided half of lots five and eight, in said bill of complaint set forth, to one Joseph T. Bailey, by a deed of mortgage, to secure to the said Joseph T. Bailey the payment of the sum of six thousand dollars, and interest thereon, due and owing from the said Carew to the said Bailey, which said mortgage was duly acknowledged, and on the day and year last aforesaid, recorded in the office of the register of deeds for the said county of Wayne; upon which said mortgage a large sum of money is still due and owing to the said Joseph T. Bailey, and the said mortgage remains in full force and effect; to which said mortgage, or to the record thereof, these defendants for greater certainty crave leave to refer.

These defendants, further severally answering, say, that the said Roger Fitzpatrick and the said Joseph T. Bailey, the owners and holders of the said mortgage above described and set forth, are the proper persons liable or interested to contest the complainant's said bond and

mortgage and the relief prayed in the said bill, and that the said persons are amenable and compelled to appear to any suit or bill brought against them by the said complainant; all which facts were in the knowledge of the said complainant and by him well known before the filing of his said bill; and therefore these defendants insist that the said Roger Fitzpatrick and the said Joseph T. Bailey ought to be, but are not, made parties to the said bill, and these defendants claim the same benefit as if they had pleaded the want of the same parties in this cause.

And these defendants deny the combination and confederacy charged in said bill; without this, that any other matter or thing material or effectual for these defendants to make answer unto, and not herein already well and sufficiently answered unto, confessed and avoided, traversed or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, or prove, as this honorable court shall direct, and pray hence to be dismissed, &c.

(Signed) JOSHUA L. CAREW,
ELISHA C. LITCHFIELD.

(Signed) WM. HALE,
Sol. and of counsel for defendants, Carew and Litchfield.

Filed May 20, 1850.
(Signed) JNO. WINDER, *Clerk.*

(Copy.)

Replication to answer of Carew and Litchfield.

The replication of William H. Greene, complainant, to the joint and several answer of Joshua L. Carew and Elisha C. Litchfield, two of the defendants to the amended bill of complaint of the above complainant.

The complainant, saving and reserving to himself all and all manner of advantage of exceptions to the manifold insufficiencies of the said answer, for replication thereunto, says, that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this complainant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this complainant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

(Signed) BARSTOW & LOCKWOOD,
Complainant's solicitors.

(Copy.)

Stipulation as to answer of Lewis Cass to amended bill.

Circuit court of the United States, for the district of Michigan, in chancery.

WILLIAM H. GREENE
vs
JOSHUA L. CAREW, Elisha C. Litchfield, the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, and Lewis Cass.

It is hereby stipulated and agreed that the answer of Lewis Cass, heretofore filed in this cause, shall stand and be treated for all purposes as the answer of said Lewis Cass to the amended bill filed in this cause on the first day of May, 1850.

Detroit, May 20, 1850.

(Signed) BARSTOW & LOCKWOOD,
Complainant's solicitors.
H. LEDYARD,
Solicitor for L. Cass.

Filed June 10, 1850.
(Signed) JNO. WINDER, *Clerk.*

Copy.—Order pro confesso against Farmers and Mechanics' Bank.

Circuit court of the United States, for the district of Michigan, in chancery.

WILLIAM H. GREENE
vs.
JOSHUA L. CAREW, Elisha C. Litchfield, the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, and Lewis Cass. } Nov. 25, 1850.

The defendants, the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, having failed to plead, answer, or demur to complainant's amended bill in this cause, on motion of Barstow and Lockwood, solicitors for the complainant, it is ordered that the said bill be, and the same is hereby, taken as confessed against said defendants.

(Signed) BARSTOW & LOCKWOOD,
Complainant's solicitors.

Filed December 16, 1850.
(Signed) JNO. WINDER, *Clerk.*

Copy.—Stipulation as to proofs, &c.

Circuit court of the United States, for the district of Michigan, in chancery.

WILLIAM H. GREENE
vs.
JOSHUA L. CAREW, Elisha C. Litchfield, the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, and Lewis Cass.

It is hereby stipulated and agreed, that the annexed instrument of assignment of the mortgage, upon which the bill in this cause is founded, to the complainant, by Samuel T. Atwater, be, and the same is hereby admitted to be genuine, and may be read in evidence on the hearing of this cause, without further proof, or being made an exhibit before a master.

And it is also agreed, that any deeds of the premises which are the subject matter of this suit, or any part thereof, which are duly acknowledged and recorded in the register's office for the county of Wayne, may be read in evidence on the hearing of this cause, without being made an exhibit before the master.

Detroit, July 30, 1850.

(Signed) WM. HALE,
Solicitor for defendants, Carew and Litchfield.

Filed December 16, 1850.

(Signed) JNO. WINDER, *Clerk.*

Copy.—Assignment of mortgage above referred to.

For and in consideration of the sum of one dollar, to me in hand paid by William H. Greene, of the city of Buffalo, the receipt whereof is hereby acknowledged, I, Samuel T. Atwater, of the same place, do hereby sell, assign, transfer, and set over to him, the said William H., to his administrators, executors, or assigns, a certain indenture of mortgage, executed by Joshua L. Carew, of Detroit, in the State of Michigan, bearing date the seventeenth day of August, in the year 1846, to the said Samuel T., on certain lands, situated in the city of Detroit aforesaid, together with the bond of the said Joshua L., to which the said mortgage is collateral security, which said mortgage is recorded in liber 7, folio 346, in the register's office of Wayne county, in said State of Michigan. To have and to hold the said mortgage, and the debt thereby secured, o his own use and benefit.

Witness my hand and seal, on this first day of March, in the year 1848.

(Signed) SAM'L T. ATWATER. [L. S.]

Copy.—Certificate of acknowledgment of above assignment.

STATE OF NEW YORK,
County of Erie, ss.

Be it remembered, that on the fifth day of December, A. D. 1848, before me, the subscriber, a commissioner in and for the said State, appointed by the Governor of the State of Michigan, to take proofs and acknowledgments of deeds and other instruments of writing under seal, to be used and recorded in the said State of Michigan, appeared Samuel T. Atwater, who is to me known to be the person described in and who has executed the foregoing instrument, and acknowledged he executed the same for the uses and purposes therein mentioned.

Witness my hand and seal, at Buffalo, in said county, the day and year above written.

(Signed) FREN. W. P. STRONG, [L. S.]
Comm'r for Michigan.

Copy.—Stipulation, confessing complainant's bill, &c.

Circuit court of the United States, for the district of Michigan, in chancery.

WILLIAM H. GREENE
vs.
JOSHUA L. CAREW, Elisha C. Litchfield, the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, and Lewis Cass.

It is hereby admitted, upon the hearing of this cause, that the facts stated in complainant's bill are true, and that the amount due the complainant on the bond and mortgage, set forth in complainant's bill, on the 8th day of November, 1849, as by the master's report of that date, filed in this cause before the last amendment of complainant's bill, was the sum of three thousand six hundred and sixty-nine dollars and eight cents, and that said report do stand as the basis of a decree to be entered in this cause, a new reference and report being hereby waived. The rights of the defendant, Lewis Cass, as set forth in his answer on file, to be protected by the decree.

It is also stipulated to admit, on the hearing of this cause, that a mortgage was made by Oren Moore, on the 12th day of November, 1842, to Roger Fitzpatrick, covering an undivided half of the same lots and real estate as described in complainant's mortgage, which half is a different half and interest from the interest covered by complainant's mortgage, and which mortgage was for about the sum of $1,500. Also, that on the 9th day of November, 1846, Joshua L. Carew made and executed to Joseph T. Bailey a mortgage upon the same undi-

vided half of said premises as is covered by the above mentioned mortgage to Roger Fitzpatrick for about $6,000, and that defendant, Litchfield, is interested as a subsequent mortgagee, and which mortgages were outstanding and due at the time of filing the bill in this cause.

Detroit, November 25, 1850.

(Signed) BARSTOW & LOCKWOOD,
Solicitors for complainant.
WM. HALE, *Defendants' solicitor.*
L. CASS,
By H. LEDYARD, *Attorney in fact.*

Filed December 16, 1850.

(Signed) JNO. WINDER, *Clerk.*

Copy.—Affidavit of regularity of proceedings to take bill pro confesso.

Circuit court of the United States, for the district of Michigan, in chancery.

WILLIAM H. GREENE
vs.
JOSHUA L. CAREW, Elisha C. Litchfield, the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, and Lewis Cass.

DISTRICT OF MICHIGAN, *Wayne county, ss.*

Thomas W. Lockwood, one of the complainant's solicitors, being sworn, says, that the bill in this cause, as amended, has been taken as confessed against the defendant, the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, and that the proceedings therefor have been regular, according to the rules and practice of this court.

(Signed) T. W. LOCKWOOD.

Subscribed and sworn, this 16th day of December, 1850, before me.
JNO. WINDER, *Clerk.*

Copy.—Final decree.

In chancery.

At a session of the circuit court of the United States, for the seventh circuit and district of Michigan, continued and held pursuant to adjournment at the district court-room in the city of Detroit, on Monday the sixteenth day of December, in the year of our Lord one thousand eight hundred and fifty; present, honorable Ross Wilkins, district judge.

In the case between—

WILLIAM H. GREENE, complainant,
and
JOSHUA L. CAREW, Elisha C. Litchfield, the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, and Lewis Cass, defendants. } In chancery.

This cause coming on to be heard upon the pleadings and stipulations of the parties, except as to the President, Directors, and Company of the Farmers and Mechanics' Bank of Michigan, against whom the said bill is taken as confessed, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

On reading and filing the report of Geo. G. Bull, one of the masters of this court, which report bears date the eighth day of November, in the year one thousand eight hundred and forty-nine, and was made in pursuance of an order of this court, heretofore made in this cause, referring it to one of the masters of this court to compute the amount due to the complainant on the bond and mortgage mentioned and set forth in said bill of complaint, from which it appears that there was due to the said complainant, at the date of said report, for said principal and interest, the sum of three thousand six hundred and sixty-nine dollars and eight cents; and on reading and filing the stipulations of the parties, and on reading and filing the affidavit of T. W. Lockwood, solicitor for complainant, showing the regularity of the proceedings in this cause to take said bill of complaint as confessed; and on motion of Barstow & Lockwood, counsel for complainant, it is ordered, adjudged, and decreed, and this court, by virtue of the authority therein vested, doth order, adjudge, and decree, that the said report, and all things therein contained, do stand ratified and confirmed. And it is further ordered, adjudged, and decreed, that the said defendants pay or cause to be paid to the said complainant, or to his solicitor, the amount so reported due as aforesaid, together with the interest and costs, on or before the sixteenth day of March, in the year one thousand eight hundred and fifty-one; and in default thereof, that all and singular the said mortgaged premises mentioned in the bill of complaint in this cause, subject to the right and title of the defendant, Lewis Cass, as set forth in his answer, and hereinafter described, or so much thereof as may be sufficient to raise the amount due to the complainant for the principal, interest, and costs in this case, and which may be sold separately without material injury to the parties interested, be sold at public auction, by or under the direction of the marshal or a master of this court, at any time after the said sixteenth day of March, in the year one thousand eight hundred and fifty-one; that the said sale be made in the county where the said mortgaged premises, or the greater part thereof, are situated; that the master or marshal give public notice of

the time and place of such sale, according to the course and practice of this court, and that the complainant, or any of the parties in this cause, may become the purchaser; that the master or marshal execute a deed to the purchaser or purchasers of the mortgaged premises on the said sale, subject to the rights of said Lewis Cass; and that the said master or marshal, out of the proceeds of said sale, pay to the complainant, or his solicitor, his costs in this suit to be taxed, and also the amount so reported due as aforesaid, together with legal interest thereon, from the date of said report, or so much thereof as the purchase money of the mortgaged premises will pay of the same; and that the master or marshal take receipts for the amount so paid, and file the same with his report; and that he bring the surplus moneys arising from said sale, if any there be, into court without delay, to abide the farther order of this court. And it is further ordered, adjudged, and decreed, that the defendant, and all persons claiming or to claim from or under them, be forever barred and foreclosed of and from all equity of redemption, and claim of, in, and to said mortgaged premises, and every part and parcel thereof; saving and reserving, however, the right, title, and interest of the defendant, Lewis Cass, as set forth in his answer in this case. And it is further ordered, that the purchaser or purchasers of said mortgaged premises at such sale be let into possession thereof; and that any of the parties in this cause, who may be in possession of said premises, or any part thereof; and any person who, since the commencement of this suit, has come into possession under them, or either of them, deliver possession thereof to such purchaser or purchasers, on production of the master or marshal's deed for such premises, and a certified copy of the order confirming the report of such sale, after such order has become absolute. And it is further ordered and decreed, that if the moneys arising from said sale shall be insufficient to pay the amount so reported due to the complainant, with interest and costs and expenses of sale as aforesaid, that said master or marshal specify the amount of such deficiency in his report of said sale; and that on the coming in and confirmation of said report the defendant, Joshua L. Carew, who is liable personally for the debt secured by the said mortgage, pay to the complainant the amount of such deficiency, with interest thereon from the date of such report, and that the complainant have execution therefor.

The description and particular boundaries of the property authorized to be sold under and by virtue of this decree, so far as the same can be ascertained from the mortgage above referred to, or from the bill of complaint in this cause, are as follows, viz:

The equal undivided one-half of all those certain pieces or parcels of land situate, lying, and being in the city of Detroit, county of Wayne, and State of Michigan, on what is called the "Cass Farm," being lots numbered five and eight, and block numbered six, with the undivided half of the brick brewery building and fixtures, apparatus, and furniture thereon, and said undivided half being the interest in said premises and brewery sold and conveyed on or about the seventh day of Novem-

ber, eighteen hundred and forty-two, (1842,) by Curtis Emerson to Elisha S. Avery, and by said Avery conveyed to said Carew. The interest in said premises herein authorized to be sold is an equitable interest, subject to the legal estate of Lewis Cass therein; and the purchaser will become entitled to a conveyance from said Cass of said legal estate upon the payment to him of the sum of eleven hundred and sixty-five dollars, on or before the first day of July, one thousand eight hundred and fifty-three, with interest thereon from the first day of July, eighteen hundred and forty-nine, (1849,) payable annually, or so much of said interest as remains unpaid.

(Signed,) ROSS WILKINS, *Judge.*

Decree passed, signed, entered, and filed December 16, 1850.

(Signed,) JNO. WINDER, *Clerk.*